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International Court of Justice

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THE INTERNATIONAL MILITARY TRIBUNAL
IN SESSION AT NUREMBERG,
GERMANY

The Rt. Hon. Lord Justice Lawrence (member for the United Kingdom of Great Britain and Northern Ireland) President

The Hon. Mr. Justice Birkett (alternate member for the United Kingdom of Great Britain and Northern Ireland)

The Hon. Francis Biddle (member for the United States of America)

The Hon. John J. Parker (alternate member for the United States of America)

M. le Professeur Donnedieu de Vabres (member for the French Republic)

M. le Conseiller Falco (alternate member for the French Republic)

Major-General Jurisprudence I.T. Nikitchenko (member for the Union of Soviet Socialist Republics)

Lt.-Colonel A.F. Volchkov (alternate member for the Union of Soviet Socialist Republics)

Commissioners appointed by the Tribunal to hear evidence relating to the Organisations

Lt.-Colonel A.M.S. Neave, Chief Commissioner

Capt. Joseph F. Tubridy

Mr. George R. Taylor

Mr. I.D. McIlwraith

Mr. I. Rasumov

M. Armand Martin-Havard

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General Secretary:

(a) Brigadier General William L. Mitchell
from November 6th 1945 to June 24th 1946.

(b) Colonel John E. Ray
from June 24th 1946 onwards.

American Secretary:

(a) Harold B. Willey
from November 6th 1945 to June 16th 1946.

(b) Walter Gilkyson
from June 16th 1946 onwards.

British Secretary: I.D. McIlwraith.

French Secretary: A. Martin-Havard.

Soviet Secretary: Major A. Poltorak.

H2753 - 0006

THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, and THE UNION OF SOVIET SOCIALIST REPUBLICS

- against -

HERMANN WILHELM GORING, RUDOLF HESS, JOACHIM VON RIBBENTROP, ROBERT LEY, WILHELM KEITEL, ERNST KALTENBRUNNER, ALFRED ROSENBERG, HANS FRANK, WILHELM FRICK, JULIUS STREICHER, WALTER FUNK, HJALMAR SCHACHT, GUSTAV KRUPP VON BOHLEN UND HALBACH, KARL DONITZ, ERICH RAEDER, BALDUR VON SCHIRACH, FRITZ SAUCKEL, ALFRED JODL, MARTIN BORMANN, FRANZ VON PAPEN, ARTUR SEYSS-INQUART, ALBERT SPEER, CONSTANTIN VON NEURATH, and HANS FRITZSCHE, individually and as Members of any of the Following Groups or Organisations to which They Respectively Belonged, Namely: DIE REICHSREGIERUNG (REICH CABINET); DAS KORPS DER POLITISCHEN LEITER DER NATIONAL-SOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (LEADERSHIP CORPS OF THE NAZI PARTY); DIE SCHUTZSTAFFELN DER NATIONAL-SOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (commonly known as the "SS") and including DIE SICHERHEITSDIENST (commonly known as the "SD"); DIE GEHEIME STAATSPOLIZEI (SECRET STATE POLICE, commonly known as the "GESTAPO"); DIE STURMABTEILUNGEN DER NSDAP (commonly known as the "SA") and the GENERAL STAFF and HIGH COMMAND of the GERMAN ARMED FORCES all as defined in Appendix B to the Indictment.

Chief Prosecutor for the United States of America:
Mr. Justice Robert H. Jackson.

" " " " French Republic:
M. Champetier de Ribes.

" " " " United Kingdom of Great Britain and Northern Ireland: Rt. Hon. Sir Hartley Shawcross, KC, MP.

" " " " Union of Soviet Socialist Republics:
State Counsellor of the 2nd Class R.H. Rudenko.

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Counsel for the Defendant	Goering:	Dr. Otto Stahmer.
"	Hess:	Dr. Alfred Seidl.
"	Ribbentrop:	Dr. Martin Horn.
"	Keitel:	Dr. Otto Nelte.
"	Kaltenbrunner:	Dr. Kurt Kauffmann.
"	Rosenberg:	Dr. Alfred Thoma.
"	Frank:	Dr. Alfred Seidl.
"	Frick:	Dr. Otto Pannenbecker.
"	Streicher:	Dr. Hans Marx.
"	Funk:	Dr. Fritz Sauter.
"	Schacht:	Dr. Rudolf Dix.
"	Doenitz	Capt. Otto Kranzbuehler.
"	Raeder:	Dr. Walter Siemers.
"	von Schirach:	Dr. Robert Servatius.
"	Jodl:	Prof. Franz Exner.
"	von Papen:	Dr. Egon Kubuschok.
"	Seyss-Inquart:	Dr. Gustav Steinbauer.
"	Speer:	Dr. Hans Flaechsner.
"	von Neurath:	Dr. Otto von Luedinghausen.
"	Fritzsche:	Dr. Heinz Fritz.
"	Bormann:	Dr. Friedrich Bergold.

Counsel for Die Reichsregierung: Dr. Egon Kubuschok.

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Counsel for	Das Korps der Politischen Leiter der Nationalsozialistischen Deutschen Arbeiterpartei: (Leadership Corps of the Nazi Party)	Dr. Robert Servatius.
	Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei: (commonly known as the SS)	Drs. Babel and Pelckmann.
	Die Sicherheitsdienst: (commonly known as the SD)	Dr. Hans Gawlik.
	Die Geheime Staatspolizei: (Secret State Police, commonly known as the Gestapo)	Dr. Rudolf Merkel.
	Die Sturmabteilungen der NSDAP: (commonly known as the SA)	Dr. Georg Boehm.
	The General Staff and High Command of the German Armed Forces:	Dr. Hans Laternser.

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JUDGMENT

On the 8th August 1945, the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics entered into an agreement establishing this Tribunal for the trial of War Criminals whose offences have no particular geographical location. In accordance with Article 5, the following Governments of the United Nations have expressed their adherence to the Agreement:

Greece, Denmark, Yugoslavia, the Netherlands, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxemburg, Haiti, New Zealand, India, Venezuela, Uruguay, and Paraguay.

By the Charter annexed to the Agreement, the constitution, jurisdiction and functions of the Tribunal were defined.

The Tribunal was invested with power to try and punish persons who had committed crimes against peace, war crimes and crimes against humanity as defined in the Charter.

The Charter also provided that at the trial of any individual member of any group or organisation the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organisation of which the individual was a member was a criminal organisation.

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In Berlin, on the 18th October 1945, in accordance with Article 14 of the Charter, an indictment was lodged against the defendants named in the caption above, who had been designated by the Committee of the Chief Prosecutors of the signatory Powers as major war criminals.

A copy of the indictment in the German language was served upon each defendant in custody at least thirty days before the Trial opened.

This indictment charges the defendants with crimes against peace by the planning, preparation, initiation and waging of wars of aggression, which were also wars in violation of international treaties, agreements and assurances: with war crimes: and with crimes against humanity. The defendants are also charged with participating in the formulation or execution of a common plan or conspiracy to commit all these crimes. The Tribunal was further asked by the Prosecution to declare all the ~~six~~ named groups or organisations to be criminal within the meaning of the Charter.

The defendant Robert Ley committed suicide in prison on the 25th October 1945. On the 15th November 1945 the Tribunal decided that the defendant Gustav Krupp von Bohlen and Halbach could not then be tried because of his physical and mental condition, but that the charges against him in the indictment should be retained for trial thereafter, if the physical and mental condition of the defendant should permit. On the 17th November 1945 the Tribunal decided to try the defendant Bormann in his absence under the provisions of Article 12 of the Charter. After argument, and consideration of full medical reports, and a statement from the defendant himself, the Tribunal decided on the 1st December 1945 that no grounds existed for a postponement of the trial against the defendant

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Hess because of his mental condition. A similar decision was made in the case of the defendant Streicher.

In accordance with Articles 16 and 23 of the Charter, Counsel were either chosen by the defendants in custody themselves, or at their request were appointed by the Tribunal. In his absence the Tribunal appointed Counsel for the defendant Bormann, and also assigned Counsel to represent the named groups or organisations.

The Trial which was conducted in four languages - English, Russian, French and German - began on the 20th November 1945, and pleas of "Not Guilty" were made by all the defendants except Bormann.

The hearing of evidence and the speeches of Counsel concluded on 31st August 1946.

403 open sessions of the Tribunal have been held. 33 witnesses gave evidence orally for the Prosecution against the individual defendants, and 61 witnesses, in addition to 19 of the defendants, gave evidence for the Defence.

A further 143 witnesses gave evidence for the Defence by means of written answers to interrogatories.

The Tribunal appointed Commissioners to hear evidence relating to the organisations, and 101 witnesses were heard for the Defence before the Commissioners, and 1,809 affidavits from other witnesses were submitted. Six reports were also submitted, summarising the contents of a great number of further affidavits.

38,000 affidavits signed by 155,000 people were submitted on behalf of the Political Leaders, 136,213 on behalf of the SS, 10,000 on behalf of the SA, 7,000 on behalf

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of the SD, 3,000 on behalf of the General Staff and OKW, and 2,000 on behalf of the Gestapo.

The Tribunal itself heard 22 witnesses for the organisations. The documents tendered in evidence for the prosecution of the individual defendants and the organisations numbered several thousands. A complete stenographic record of everything said in court has been made, as well as an electrical recording of all the proceedings.

Copies of all the documents put in evidence by the Prosecution have been supplied to the Defence in the German language. The applications made by the defendants for the production of witnesses and documents raised serious problems in some instances, on account of the unsettled state of the country. It was also necessary to limit the number of witnesses to be called, in order to have an expeditious hearing, in accordance with Article 18 (c) of the Charter. The Tribunal after examination, granted all those applications which in their opinion were relevant to the defence of any defendant or named group or organisation, and were not cumulative. Facilities were provided for obtaining those witnesses and documents granted through the office of the General Secretary established by the Tribunal.

Much of the evidence presented to the Tribunal on behalf of the Prosecution was documentary evidence, captured by the Allied armies in German army headquarters, Government buildings, and elsewhere. Some of the documents were found in salt mines, buried in the ground, hidden behind false walls and in other places thought to be secure from discovery. The case, therefore against the defendants rests in a large measure on documents

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of their own making, the authenticity of which has not been challenged except in one or two cases.

The Charter Provisions

The individual defendants are indicted under Article 6 of the Charter, which is as follows:

"Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations, committed any of the following crimes.

"The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

"(a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing:

"(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity:

"(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

"Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

These provisions are binding upon the Tribunal as the law to be applied to the case. The Tribunal will later discuss them in more

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detail; but, before doing so, it is necessary to review the facts. For the purpose of showing the background of the aggressive war and war crimes charged in the indictment, the Tribunal will begin by reviewing some of the events that followed the first world war, and in particular, by tracing the growth of the Nazi Party under Hitler's leadership to a position of supreme power from which it controlled the destiny of the whole German people, and paved the way for the alleged commission of all the crimes charged against the defendants.

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THE NAZI REGIME IN GERMANY.

THE ORIGIN AND AIMS OF THE NAZI PARTY.

On 5th January 1919, not two months after the conclusion of the Armistice which ended the first World War, and six months before the signing of the Peace Treaties at Versailles, there came into being in Germany a small political party called the German Labour Party. On the 12th September 1919 Adolf Hitler became a member of this party, and at the first public meeting held in Munich, on 24th February 1920, he announced the party's programme. That programme, which remained unaltered until the party was dissolved in 1945, consisted of twenty-five points, of which the following five are of particular interest on account of the light they throw on the matters with which the Tribunal is concerned:

"Point 1. We demand the unification of all Germans in the Greater Germany, on the basis of the right of self-determination of peoples.

Point 2. We demand equality of rights for the German people in respect to the other nations; abrogation of the peace treaties of Versailles and Saint Germain.

Point 3. We demand land and territory for the sustenance of our people, and the colonisation of our surplus population.

Point 4. Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently no Jew can be a member of the race . . .

Point 22. We demand abolition of the mercenary troops and formation of a national army."

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Of these aims ~~of the NSDAP~~, the one which seems to have been regarded as the most important, and which figured in almost every public speech, was the removal of the "disgrace" of the Armistice, and the restrictions of the peace treaties of Versailles and Saint Germain. In a typical speech at Munich on the 13th April 1923, for example, Hitler said with regard to the Treaty of Versailles:

> "The treaty was made in order to bring twenty million Germans to their ~~knees~~ deaths, and to ruin the German nation . . . At its foundation our movement formulated three demands:
>
> 1. Setting aside of the Peace Treaty.
> 2. Unification of all Germans.
> 3. Land and soil to feed our nation."

The demand for the unification of all Germans in the Greater Germany was to play a large part in the events preceding the seizure of Austria and Czechoslovakia; the abrogation of the Treaty of Versailles was to become a decisive motive in attempting to justify the policy of the German Government; the demand for land was to be the justification for the acquisition of "living space" at the expense of other nations; the expulsion of the Jews from membership of the race of German blood was to lead to the atrocities against the Jewish people; and the demand for a national army was to result in measures of re-armament on the largest possible scale, and ultimately to War.

On the 29th July 1921, the Party which had changed its name to National Sozialistische Deutsche Arbeiter Partei (NSDAP) was re-organised, Hitler becoming the first "Chairman". It was in this year that the Sturmabteilung or SA was founded, with Hitler at its head, as a private

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para-military force, which allegedly was to be used for the purpose of protecting NSDAP leaders from attack by rival political parties, and preserving order at NSDAP meetings, but in reality was used for fighting political opponents on the streets. In March 1923 the defendant Goering was appointed head of the SA.

The procedure within the Party was governed in the most absolute way by the "leadership principle" (Fuehrerprinzip).

According to the principle, each Fuehrer has the right to govern, administer or decree, subject to no control of any kind and at his complete discretion, subject only to the orders he received from above.

This principle applied in the first instance to Hitler himself as the Leader of the Party, and in a lesser degree to all other party officials. All members of the Party swore an oath of "eternal allegiance" to the Leader.

There were only two ways in which Germany could achieve the three main aims above-mentioned, by negotiation, or by force. The twenty-five points of the NSDAP programme do not specifically mention the methods on which the leaders of the party proposed to rely, but the history of the Nazi regime shows that Hitler and his followers were only prepared to negotiate on the terms that their demands were conceded, and that force would be used if they were not.

On the night of the 8th November 1923 an abortive putsch took place in Munich. Hitler and some of his followers burst into a meeting in the Bürgerbräu Cellar, which was being addressed by the Bavarian Prime Minister Kahr, with the intention of obtaining from him a decision to march forth-

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with on Berlin. On the morning of the 9th November, however, no Bavarian support was forthcoming, and Hitler's demonstration was met by the armed forces of the Reichswehr and the Police. Only a few volleys were fired; and after a dozen of his followers had been killed, Hitler fled for his life, and the demonstration was over. The defendants Streicher, Frick and Hess all took part in the attempted rising. Hitler was later tried for high treason, and was convicted and sentenced to imprisonment. The SA was outlawed. Hitler was released from prison in 1924 and in 1925 the Schutzstaffel, or SS, was created, nominally to act as his personal bodyguard, but in reality to terrorise political opponents. This was also the year of the publication of "Mein Kampf", containing the political views and aims of Hitler, which came to be regarded as the authentic source of Nazi doctrine.

THE SEIZURE OF POWER.

In the eight years that followed the publication of "Mein Kampf", the NSDAP greatly extended its activities throughout Germany, paying particular attention to the training of youth in the ideas of National Socialism. The first Nazi youth organisation had come into existence in 1922, but it was in 1925 that the Hitler Jugend was officially recognised by the NSDAP. In 1931 Baldur von Schirach, who had joined the NSDAP in 1925, became Reich Youth Leader of the NSDAP.

The Party exerted every effort to win political support from the German people. Elections were contested both for the Reichstag and the Landtage. The NSDAP leaders did not make any serious attempt to hide the fact that their only purpose in entering German political life was in order to destroy the democratic structure of the Weimar Republic, and to substitute for it a

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National Socialist totalitarian regime which would enable them to carry out their avowed policies without opposition. In preparation for the day when he would obtain power in Germany, Hitler in January 1929 appointed Heinrich Himmler as Reichsfuehrer SS with the special task of building the SS into a strong but élite group which would be dependable in all circumstances.

On the 30th January 1933 Hitler succeeded in being appointed Chancellor of the Reich by President von Hindenburg. The defendants Goering, Schacht and von Papen were active in enlisting support to bring this about. Von Papen had been appointed Reich Chancellor on the 1st June 1932. On the 14th June he rescinded the decree of the Bruening Cabinet of the 13th April 1932, which had dissolved the Nazi para-military organisations, including the SA and the SS. This was done by agreement between Hitler and von Papen, although von Papen denies that it was agreed as early as the 28th May, as Dr. Hans Volz asserts in "Dates from the History of the NSDAP"; but that it was the result of an agreement was admitted in evidence by von Papen.

The Reichstag elections of the 31st July 1932 resulted in a great accession of strength to the NSDAP, and von Papen offered Hitler the post of Vice Chancellor, which he refused, insisting upon the Chancellorship itself. In November 1932 a petition signed by leading industrialists and financiers was presented to President Hindenburg, calling upon him to entrust the Chancellorship to Hitler; and in the collection of signatures to the petition Schacht took a prominent part.

The election of the 6th November, which followed the defeat of the Government, reduced the number of NSDAP members, but von Papen made further efforts to gain Hitler's participation, without success. On the 12th November Schacht wrote to Hitler:

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> "I have no doubt that the present development of things can only lead to your becoming Chancellor. It seems as if our attempt to collect a number of signatures from business circles for this purpose was not altogether in vain ..."

After Hitler's refusal of the 16th November, von Papen resigned, and was succeeded by General von Schleicher; but von Papen still continued his activities. He met Hitler at the house of the Cologne banker von Schroeder on the 4th January 1933, and attended a meeting at the defendant Ribbentrop's house on the 22nd January, with the defendant Goering and others. He also had an interview with President Hindenburg on the 9th January, and from the 22nd January onwards he discussed officially with Hindenburg the formation of a Hitler Cabinet.

Hitler held his first Cabinet meeting on the day of his appointment as Chancellor, at which the defendants Goering, Frick, Funk, von Neurath and von Papen were present in their official capacities. On the 28th February 1933 the Reichstag building in Berlin was set on fire. This fire was used by Hitler and his Cabinet as a pretext for passing on the same day a decree suspending the constitutional guarantees of freedom. The decree was signed by President Hindenburg and countersigned by Hitler and the defendant Frick, who then occupied the post of Reich Minister of the Interior. On the 5th March elections were held, in which the NSDAP obtained 288 seats of the total of 647. The Hitler Cabinet was anxious to pass an "Enabling Act" that would give them full legislative powers, including the power to deviate from the Constitution. They were without the necessary majority in the Reichstag to be able to do this constitutionally. They therefore made use of the decree suspending the guarantees of freedom and took into so-called "protective custody" a large number of Communist deputies and party

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officials. Having done this, Hitler introduced the "Enabling Act" into the Reichstag, and after he had made it clear that if it was not passed, further forceful measures would be taken, the act was passed on the 24th March 1933.

THE CONSOLIDATION OF POWER (2.) Berlett

The NSDAP, having achieved power in this way, now proceeded to extend its hold on every phase of German life. Other political parties were persecuted, their property and assets confiscated, and many of their members placed in concentration camps. On 26th April 1933 Goering founded in Prussia the Geheime Staatspolizei, or Gestapo, as a secret police, and confided to the deputy leader of the Gestapo that its main task was to eliminate political opponents of National Socialism and Hitler. On the 14th July 1933 a law was passed declaring the NSDAP to be the only political party, and making it criminal to maintain or form any other political party.

In order to place the complete control of the machinery of government in the hands of the Nazi leaders, a series of laws and decrees were passed which reduced the powers of regional and local governments throughout Germany, transforming them into subordinate divisions of the government of the Reich. Representative assemblies in the ~~Lande~~ LAENDER were abolished, and with them all local elections. The Government then proceeded to secure control of the Civil Service. This was achieved by a process of centralisation, and by a careful sifting of the whole Civil Service administration. By a law of the 7th April it was provided that officials "who were of non-Aryan descent" should be retired; and it was also decreed that "officials who because of their previous political activity do not offer security that they will exert

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themselves for the national state without reservation shall be discharged". The law of the 11th April 1933 provided for the discharge of "all Civil Servants who belong to the Communist Party". Similarly, the Judiciary was subjected to control. Judges were removed from the Bench for political or racial reasons. They were spied upon and made subject to the strongest pressure to join the Nazi Party as an alternative to being dismissed. When the Supreme Court acquitted three of the four defendants charged with complicity in the Reichstag fire, its jurisdiction in cases of treason was thereafter taken away and given to a newly established "People's Court", consisting of two Judges and five officials of the Party. Special courts were set up to try political crimes and only party members were appointed as Judges. Persons were arrested by the SS for political reasons, and detained in prisons and concentration camps; and the Judges were without power to intervene in any way. Pardons were granted to members of the Party who had been sentenced by the Judges for proved offences. In 1935 several officials of the Hohenstein concentration camp were convicted of inflicting brutal treatment upon the inmates. High Nazi officials tried to influence the Court, and after the officials had been convicted, Hitler pardoned them all. In 1942 "Judges' letters" were sent to all German Judges by the Government, instructing them as to the "general lines" that they must follow.

In their determination to remove all sources of opposition, the NSDAP leaders turned their attention to the trade unions, the churches and the Jews. In April 1933 Hitler ordered the late defendant Ley, who was then staff director of the political organisation of the NSDAP, "to take over the trade unions". Most of the trade unions of Germany were joined together in two

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large federations, the "Free Trade Unions" and the "Christian Trade Unions". Unions outside these two large federations contained only 15% of the total union membership. On the 21st April 1933 Ley issued an NSDAP directive announcing a "co-ordination action" to be carried out on the 2nd May against the Free Trade Unions. The directive ordered that SA and SS men were to be employed in the planned "occupation of trade union properties and for the taking into protective custody of personalities who come into question." At the conclusion of the action the official NSDAP press service reported that the National Socialist Factory ~~Sales~~ CELLS Organisation had "eliminated the old leadership of Free Trade Unions" and taken over the leadership themselves. Similarly, on the 3rd May 1933 the NSDAP press service announced that the Christian trade unions "have unconditionally subordinated themselves to the leadership of Adolf Hitler." In place of the trade unions the Nazi Government set up a Deutsches Arbeiter Front (DAF), controlled by the NSDAP, and which, in practice, all workers in Germany were compelled to join. The chairmen of the unions were taken into custody and were subjected to ill-treatment, ranging from assault and battery to murder.

In their effort to combat the influence of the Christian churches, whose doctrines were fundamentally at variance with National Socialist philosophy and practice, the Nazi Government proceeded more slowly. The extreme step of banning the practice of the Christian religion was not taken, but year by year efforts were made to limit the influence of Christianity on the German people, since, in the words used by the defendant Bormann to the defendant Rosenberg in an official letter "the Christian religion and National Socialist doctrines are not compatible." In the month of June 1941 the defendant Bormann issued a secret decree on the relation of Christianity and

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National Socialism. The decree stated that:

> "For the first time in German history the Fuehrer consciously and completely has the leadership in his own hand. With the Party, its components and attached units, the Fuehrer has created for himself and thereby the German Reich Leadership, an instrument which makes him independent of the Treaty ... More and more the people must be separated from the churches and their organs, the Pastor ... Never again must an influence on leadership of the people be yielded to the churches. This influence must be broken completely and finally. Only the Reich Government and by its direction the Party, its components and attached units, have a right to leadership of the people."

From the earliest days of the NSDAP, anti-Semitism had occupied a prominent place in National Socialist thought and propaganda. The Jews, who were considered to have no right to German citizenship, were held to have been largely responsible for the troubles with which the Nation was afflicted following on the war of 1914-1918. Furthermore, the antipathy to the Jews was intensified by the insistence which was laid upon the superiority of the Germanic race and blood. The second chapter of Book 1 of "Mein Kampf" is dedicated to what may be called the "Master Race" theory, the doctrine of Aryan superiority over all other races, and the right of Germans in virtue of this superiority to dominate and use other peoples for their own ends. With the coming of the Nazis into power in 1933, persecution of the Jews came official state policy. On the 1st April 1933, a boycott of Jewish enterprises was approved by the Nazi Reich Cabinet, and during the following years a series of anti-Semitic laws were passed, restricting the activities of Jews in the Civil Service, in the legal profession, in journalism and in the armed forces. In September 1935, the so-called Nuremberg Laws were passed, the most important effect of which was to deprive Jews of German citizenship. In this way the influence of Jewish elements on the affairs

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of Germany was extinguished, and one more potential source of opposition to Nazi policy was rendered powerless.

In any consideration of the crushing of opposition, the massacre of the 30th June 1934 must not be forgotten. It has become known as the "Röhm Purge" or "the blood bath", and revealed the methods which Hitler and his immediate associates, including the defendant Goering, were ready to employ to strike down all opposition and consolidate their power. On that day Röhm, the Chief of Staff of the SA since 1931, was murdered by Hitler's orders, and the "Old Guard" of the SA was massacred without trial and without warning. The opportunity was taken to murder a large number of people who at one time or another had opposed Hitler.

The ostensible ground for the murder of Röhm was that he was plotting to overthrow Hitler, and the defendant Goering gave evidence that knowledge of such a plot had come to his ears. Whether this was so or not it is not necessary to determine.

On July 3rd the Cabinet approved Hitler's action and described it as "legitimate self-defence by the State."

Shortly afterwards Hindenburg died, and Hitler became both Reich President and Chancellor. At the Nazi-dominated Plebiscite, which followed, 38 million Germans expressed their approval, and with the Reichswehr taking the oath of allegiance to the Fuehrer, full power was now in Hitler's hands.

Germany had accepted the Dictatorship with all its methods of terror, and its cynical and open denial of the rule of law.

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Apart from the policy of crushing the potential opponents of their regime, the Nazi Government took active steps to increase its power over the German population. In the field of education, everything was done to ensure that the youth of Germany was brought up in the atmosphere of National Socialism and accepted National Socialist teachings. As early as the 7th April 1933 the law reorganising the Civil Service had made it possible for the Nazi Government to remove all "subversive and unreliable teachers"; and this was followed by numerous other measures to make sure that the schools were staffed by teachers who could be trusted to teach their pupils the full meaning of National Socialist creed. Apart from the influence of National Socialist teaching in the schools, the Hitler Youth Organisation was also relied upon by the Nazi Leaders for obtaining fanatical support from the younger generation. The defendant von Schirach, who had been Reich Youth Leader of the NSDAP since 1931, was appointed Youth Leader of the German Reich in June 1933. Soon all the youth organisations had been either dissolved or absorbed by the Hitler Youth, with the exception of the Catholic Youth. The Hitler Youth was organised on strict military lines, and as early as 1933 the Wehrmacht was co-operating in providing pre-military training for the Reich Youth.

The Nazi Government endeavoured to unite the nation in support of their policies through the extensive use of propaganda. A number of agencies were set up whose duty was to control and influence the press, radio, films, publishing firms etc. in Germany, and to supervise entertainment and cultural and artistic activities. All these agencies came under Goebbels' Ministry of the People's Enlightenment and Propaganda, which together with a corresponding organisation in the NSDAP and the Reich

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Chamber of Culture, was ultimately responsible for exercising this supervision. The defendant Rosenberg played a leading part in disseminating the National Socialist doctrines on behalf of the Party, and the defendant Fritzsche, in conjunction with Goebbels, performed the same task for the State.

The greatest emphasis was laid on the supreme mission of the German people to lead and dominate by virtue of their Nordic blood and racial purity; and the ground was thus being prepared for the acceptance of the idea of German world supremacy.

Through the effective control of the radio and the press, the German people, during the years which followed 1933, were subjected to the most intensive propaganda in furtherance of the regime. Hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it.

Independent judgment, based on freedom of thought, was rendered quite impossible.

MEASURES OF RE-ARMAMENT

During the years immediately following Hitler's appointment as Chancellor, the Nazi Government set about re-organising the economic life of Germany, and in particular the armament industry. This was done on a vast scale and with extreme thoroughness.

It was necessary to lay a secure financial foundation for the building of armaments, and in April 1936 the defendant Goering was appointed co-ordinator for raw materials and foreign exchange, and empowered to supervise all state and party activities in these fields. In this capacity he brought together the War Minister, the Minister of Economics, the Reich Finance

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Minister, the President of the Reichsbank and the Prussian Finance Minister to discuss problems connected with war mobilisation, and on the 27th May 1936, in addressing these men, Goering opposed any financial limitation of war production and added that "all measures are to be considered from the standpoint of an assured waging of war." At the Party Rally in Nuremberg in 1936, Hitler announced the establishment of the Four Year Plan and the appointment of Goering as the Plenipotentiary in charge. Goering was already engaged in building a strong air force and on the 8th July 1938 he announced to a number of leading German aircraft manufacturers that the German Air Force was already superior in quality and quantity to the English. On the 14th October 1938, at another conference, Goering announced that Hitler had instructed him to organise a gigantic armament programme, which would make insignificant all previous achievements. He said that he had been ordered to build as rapidly as possible an air force five times as large as originally planned, to increase the speed of the re-armament of the navy and army, and to concentrate on offensive weapons, principally heavy artillery and heavy tanks. He then laid down a specific programme designed to accomplish these ends. The extent to which re-armament had been accomplished was stated by Hitler in his memorandum of October 9th 1939, after the campaign in Poland:

> "The military application of our people's strength has been carried through to such an extent that within a short time at any rate it cannot be markedly improved upon by any manner of effort ...
>
> The warlike equipment of the German people is at present larger in quantity and better in quality for a greater number of German divisions that in the year 1914. The weapons themselves, taking a substantial cross-section, are more modern than is the case with any other country in the world at this time. They have just proved their supreme war worthiness in their victorious campaign ... There is no evidence available to show that any country in the world disposes of a better total ammunition stock than the

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Reich ... The A.A. artillery is not equalled by any country in the world."

In this re-organisation of the economic life of Germany for military purposes the Nazi Government found the German armament industry quite willing to co-operate, and to play its part in the re-armament programme. In April 1933 Gustav Krupp von Bohlen submitted to Hitler on behalf of the Reich Association of German Industry a plan for the re-organisation of German industry, which he stated was characterised by the desire to co-ordinate economic measures and political necessity. In the plan itself Krupp stated that "the turn of political events is in line with the wishes which I myself and the board of directors have cherished for a long time." What Krupp meant by this statement is fully shown by the draft text of a speech which he planned to deliver in the University of Berlin in January 1944, though the speech was in fact never delivered. Referring to the years 1919 to 1933, Krupp wrote: "It is the one great merit of the entire German war economy that it did not remain idle during those bad years, even though its activity could not be brought to light, for obvious reasons. Through years of secret work, scientific and basic groundwork was laid in order to be ready again to work for the German armed forced at the appointed hour, without loss of time or experience ... Only through the secret activity of German enterprise together with the experience gained meanwhile through production of peace time goods was it possible after 1933 to fall into step with the new tasks arrived at, restoring Germany's military power."

In October 1933 Germany withdrew from the International Disarmament Conference and League of Nations. In 1935 the Nazi Government decided to take the first open steps to free itself from its obligations under the

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Treaty of Versailles. On the 10th March 1935 the defendant Goering announced that Germany was building a military air force. Six days later, on the 16th March 1935, a law was passed bearing the signatures, smong others, of the defendants Goering, Hess, Frank, Frick, Schacht and von Neurath, instituting compulsory military service and fixing the establishment of the German Army at a peace time strength of 500,000 men. In an endeavour to re-assure public opinion in other countries, the Government announced on the 21st May 1935 that Germany would, though renouncing the disarmament clauses, still respect the territorial limitations of the Versailles Treaty, and would comply with the Locarno Pacts. Nevertheless, on the very day of this announcement, the secret Reich Defence Law was passed and its publication forbidden by Hitler. In this ~~decree~~ LAW, the powers and duties of the Chancellor and other Ministers were defined, should Germany become involved in war. It is clear from this law that by May of 1935 Hitler and his Government had arrived at the stage in the carrying out of their policies when it was necessary for them to have in existence the requisite machinery for the administration and government of Germany in the event of their policy leading to war.

At the same time that this preparation of the German economy for war was being carried out, the German armed forces themselves were preparing for a re-building of Germany's armed strength.

The German Navy was particularly active in this regard. The official German Naval historians, Assmann and Gladisch, admit that the Treaty of Versailles had only been in force for a few months before it was violated, particularly in the construction of a new submarine arm.

The publications of Captain Schüssler and Oberst Scherf, both of which were sponsored by the defendant Raeder, were designed to show the German

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people the nature of the Navy's effort to re-arm in defiance of the Treaty of Versailles.

The full details of these publications have been given in evidence.

On the 12th May 1934 the defendant Raeder issued the Top Secret armament plan for what was called the Third Armament Phase. This contained the sentence:

> "All theoretical and practical A-preparations are to be drawn up with a primary view to readiness for a war without any alert period."

One month later, in June 1934, the defendant Raeder had a conversation with Hitler in which Hitler instructed him to keep secret the construction of U-boats and of warships over the limit of 10,000 tons which was then being undertaken.

And on the 2nd November 1934, the defendant Raeder had another conversation with Hitler and the defendant Goering, in which Hitler said that he considered it vital that the German Navy "should be increased as planned, as no war could be carried on if the Navy was not able to safeguard the ore imports from Scandinavia."

The large orders for building given in 1933 and 1934 are sought to be excused by the defendant Raeder on the ground that negotiations were in progress for an agreement between Germany and Great Britain permitting Germany to build ships in excess of the provisions of the Treaty of Versailles. This agreement, which was signed in 1935, restricted the German Navy to a tonnage equal to one third of that of the British, except in respect of U-boats where 45% was agreed, subject always to the right to exceed this proportion after first informing the British Government and giving them an opportunity of discussion.

The Anglo-German Treaty followed in 1937, under which both Powers

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bound themselves to notify full details of their building programme at least four months before any action was taken.

It is admitted that these clauses were not adhered to by Germany.

In capital vessels, for example, the displacement details were falsified by 20%, whilst in the case of U-boats, the German historians Assmann and Gladisch say:

> "It is probably just in the sphere of submarine construction that Germany adhered the least to the restrictions of the German-British Treaty."

The importance of these breaches of the Treaty is seen when the motive for this re-armament is considered. In the year 1940 the defendant Raeder himself wrote:

> "The Fuehrer hoped until the last moment to be able to put off the threatening conflict with England until 1944-5. At that time, the Navy would have had available a fleet with a powerful U-boat superiority, and a much more favourable ratio as regards strength in all other types of ships, particularly those designed for warfare on the High Seas."

The Nazi Government as already stated, announced on the 21st May 1935 their intention to respect the territorial limitations of the Treaty of Versailles. On the 7th March 1936, in defiance of that Treaty, the de-militarised zone of the Rhineland was entered by German troops. In announcing this action to the German Reichstag, Hitler endeavoured to justify the re-entry by references to the recently concluded alliances between France and the Soviet Union, and between Czechoslovakia and the Soviet Union. He also tried to meet the hostile reaction which he no doubt expected to follow this violation of the Treaty by saying:

> "We have no territorial claims to make in Europe."

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THE COMMON PLAN OR CONSPIRACY AND AGGRESSIVE WAR.

The Tribunal now turns to the consideration of the Crimes against peace charged in the Indictment. Count One of the Indictment charges the defendants with conspiring or having a common plan to commit crimes against peace. Count Two of the Indictment charges the defendants with committing specific crimes against peace by planning preparing, initiating and waging wars of aggression against a number of other States. It will be convenient to consider the question of the existence of a common plan and the question of aggressive war together, and to deal later in this Judgment with the question of the individual responsibility of the defendants.

The charges in the Indictment that the defendants planned and waged aggressive wars are charges of the utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world.

To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.

The first acts of aggression referred to in the Indictment are the seizure of Austria and Czechoslovakia: and the first war of aggression charged in the Indictment is the war against Poland begun on the 1st September 1939.

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Before examining that charge it is necessary to look more closely at some of the events which preceded these acts of aggression. The war against Poland did not come suddenly out of an otherwise clear sky; the evidence has made it plain that this war of aggression, as well as the seizure of Austria and Czechoslovakia, was pre-meditated and carefully prepared, and was not undertaken until the moment was thought opportune for it to be carried through as a definite part of the pre-ordained scheme and plan.

For the aggressive designs of the Nazi Government were not accidents arising out of the immediate political situation in Europe and the world; they were a deliberate and essential part of Nazi foreign policy.

From the beginning, the National Socialist movement claimed that its object was to unite the German people in the consciousness of their mission and destiny, based on inherent qualities of race, and under the guidance of the Fuehrer.

For its achievement, two things were deemed to be essential: the disruption of the European order as it had existed since the Treaty of Versailles, and the creation of a Greater Germany beyond the frontiers of 1914. This necessarily involved the seizure of foreign territories.

War was seen to be inevitable, or at the very least, highly probable, if these purposes were to be accomplished. The German people, therefore, with all their resources, were to be organised as a great political-military army, schooled to obey without question any policy decreed by the State.

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IDEOLOGICAL PREPARATION FOR AGGRESSION.

In "Mein Kampf" Hitler had made this view quite plain. It must be remembered that "Mein Kampf" was no mere private diary in which the secret thoughts of Hitler were set down. Its contents were rather proclaimed from the house-tops. It was used in the schools and Universities and among the Hitler Youth, in the SS and the SA, and among the German people generally, even down to the presentation of an official copy to all newly-married people. By the year 1945 over 6½ million copies had been circulated. The general contents are well known. Over and over again Hitler asserted his belief in the necessity of force as the means of solving international problems, as in the following quotation:

> "The soil on which we now live was not a gift bestowed by Heaven on our forefathers. They had to conquer it by risking their lives. So also in the future, our people will not obtain territory, and therewith the means of existence, as a favour from any other people, but will have to win it by the power of a triumphant sword."

"Mein Kampf" contains many such passages, and the extolling of force as an instrument of foreign policy is openly proclaimed.

The precise objectives of this policy of force are also set forth in detail. The very first page of the book asserts that "German-Austria must be restored to the great German Motherland", not on economic grounds, but because "people of the same blood should be in the same Reich."

The restoration of the German frontiers of 1914 is declared to be wholly insufficient, and if Germany is to exist at all, it must be as a world power with the necessary territorial magnitude.

"Mein Kampf" is quite explicit in stating where the increased territory is to be found:

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> "Therefore we National Socialists have purposely drawn a line through the line of conduct followed by pre-war Germany in foreign policy. We put an end to the perpetual Germanic march towards the South and West of Europse, and turn our eyes towards the lands of the East. We finally put a stop to the colonial and trade policy of the pre-war times, and pass over to the territorial policy of the future.
>
> But when we speak of new territory in Europe to-day, we must think principally of Russia and the border states subject to her."

"Mein Kampf" is not to be regarded as a mere literary exercise, nor as an inflexible policy or plan incapable of modification.

Its importance lies in the unmistakable attitude of aggression revealed throughout its pages.

THE PLANNING OF AGGRESSION.

Evidence from captured documents has revealed that Hitler held four secret meetings to which the Tribunal propose to make special reference because of the light they shed upon the question of the common plan and aggressive war.

These meetings took place on the 5th November 1937, the 23rd May 1939, the 22nd August 1939 and the 23rd November 1939.

At these meetings important declarations were made by Hitler as to his purposes, which are quite unmistakable in their terms.

The documents which record what took place at these meetings have been subject to some criticism at the hands of defending Counsel.

Their essential authenticity is not denied, but it is said, for example, that they do not purpose to be verbatim transcripts of the speeches they

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record, that the document dealing with the meeting on the 5th November 1937, was dated five days after the meeting had taken place, and that the two documents dealing with the meeting of August 22nd 1939 differ from one another, and are unsigned.

Making the fullest allowance for criticism of this kind, the Tribunal is of opinion that the documents are documents of the highest value, and that their authenticity and substantial truth are established.

They are obviously careful records of the events they describe, and they have been preserved as such in the archives of the German Government, from whose custody they were captured. Such documents could never be dismissed as inventions, nor even as inaccurate or distorted; they plainly record events which actually took place.

CONFERENCES OF THE 23rd NOVEMBER 1939 AND 5th NOVEMBER 1937.

It will perhaps be useful to deal first of all with the meeting of the 23rd November 1939, when Hitler called his Supreme Commanders together. A record was made of what was said, by one of those present. At the date of the meeting, Austria and Czechoslovakia had been incorporated into the German Reich, Poland had been conquered by the German armies, and the war with Great Britain and France was still in its static phase. The moment was opportune for a review of past events. Hitler informed the Commanders that the purpose of the Conference was to give them an idea of the world of his thoughts, and to tell them his decision. He thereupon reviewed his political task since 1919, and referred to the secession of Germany from the League of Nations,

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the denunciation of the Disarmament Conference, the order for re-armament, the introduction of compulsory armed service, the occupation of the Rhineland, the seizure of Austria, and the action against Czechoslovakia. He stated:

> "One year later, Austria came; this step also was considered doubtful. It brought about a considerable reinforcement of the Reich. The next step was Bohemia, Moravia and Poland. This step also was not possible to accomplish in one campaign. First of all, the western fortification had to be finished. It was not possible to reach the goal in one effort. It was clear to me from the first moment that I could not be satisfied with the Sudeten German territory. That was only a partial solution. The decision to march into Bohemia was made. Then followed the erection of the Protectorate and with that the basis for the action against Poland was laid, but I wasn't quite clear at that time whether I should start first against the East and then in the West or vice versa... Basically I did not organise the armed forces in order not to strike. The decision to strike was always in me. Earlier or later I wanted to solve the problem. Under pressure it was decided that the East was to be attacked first."

This address, reviewing past events and re-affirming the aggressive intentions present from the beginning, puts beyond any question of doubt the character of the actions against Austria and Czechoslovakia, and the war against Poland.

For they had all been accomplished according to plan; and the nature of that plan must now be examined in a little more detail.

At the meeting of the 23rd November 1939 Hitler was looking back to things accomplished; at the earlier meetings now to be considered, he was looking forward, and revealing his plans to his confederates. The comparison is instructive.

The meeting held at the Reich Chancellery in Berlin on the 5th November 1937 was attended by Lt.-Col. Hosbach, Hitler's personal adjutant, who

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compiled a long note of the proceedings, which he dated the 10th November 1937 and signed.

The persons present were Hitler, and the defendants Goering, von Neurath and Raeder, in their capacities as Commander-in-Chief of the Luftwaffe, Reich Foreign Minister and Commander-in-Chief of the Navy respectively, General von Blomberg, Minister of War, and General von Fritsch, the Commander-in-Chief of the Army.

Hitler began by saying that the subject of the conference was of such high importance that in other states it would have taken place before the Cabinet. He went on to say that the subject matter of his speech was the result of his detailed deliberations, and of his experiences during his four and a half years of Government. He requested that the statements he was about to make should be looked upon in the case of his death as his last will and testament. Hitler's main theme was the problem of living space, and he discussed vavious possible solutions, only to set them aside. He then said that the seizure of living space on the continent of Europe was therefore necessary, expressing himself in these words:

> "It is not a case of conquering people but of conquering agriculturally useful space. It would also be more to the purpose to seek raw material producing territory in Europe directly adjoining the Reich and not overseas, and this solution would have to be brought into effect for one or two generations ... The history of all times - Roman Empire, British Empire - has proved that every space expansion can only be effected by breaking resistance and taking risks. Even setbacks are unavoidable: neither formerly nor to-day has space been found without an owner; the attacker always comes up against the proprietor."

He concluded with this observation:

> "The question for Germany is where the greatest possible conquest could be made at the lowest cost."

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Nothing could indicate more plainly the aggressive intentions of Hitler, and the events which soon followed showed the reality of his purpose. It is impossible to accept the contention that Hitler did not actually mean war; for after pointing out that Germany might expect the opposition of England and France, and analysing the strength and the weakness of those powers in particular situations, he continued:

> "The German question can be solved only by way of force, and this is never without risk... If we place the decision to apply force with risk at the head of the following expositions, then we are left to reply to the questions 'when' and 'how'. In this regard we have to decide upon three different cases."

The first of these three cases set forth a hypothetical international situation, in which he would take action not later than 1943 to 1945, saying:

> "If the Fuehrer is still living then it will be his irrevocable decision to solve the German space problem not later than 1943 to 1945. The necessity for action before 1943 to 1945 will come under consideration in Cases 2 and 3."

The second and third cases to which Hitler referred show the plain intention to seize Austria and Czechoslovakia, and in this connection Hitler said:

> "For the improvement of our military-political position, it must be our first aim in every case of entanglement by war to conquer Czechoslovakia and Austria simultaneously in order to remove any threat from the flanks in case of a possible advance westwards."

He further added:

> "The annexation of the two states to Germany militarily and politically would constitute a considerable relief, owing to shorter and better frontiers, the freeing of fighting personnel for other purposes, and the possibility of reconstituting new armies up to a strength of about twelve divisions."

This decision to seize Austria and Czechoslovakia was discussed in some detail;

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the action was to be taken as soon as a favourable opportunity presented itself.

The military strength which Germany had been building up since 1933 was now to be directed at the two specific countries, Austria and Czechoslovakia.

The defendant Goering testified that he did not believe at that time that Hitler actually meant to attack Austria and Czechoslovakia, and that the purpose of the conference was only to put pressure on von Fritsch to speed up the re-armament of the Army.

The defendant Raeder testified that neither he, nor von Fritsch, nor von Blomberg, believed that Hitler actually meant war, a conviction which the defendant Raeder claims that he held up to the 22nd August 1939. The basis of this conviction was his hope that Hitler would obtain a "political solution" of Germany's problems. But all that this means, when examined, is the belief that Germany's position would be so good, and Germany's armed might so overwhelming, that the territory desired could be obtained without fighting for it. It must be remembered too that Hitler's declared intention with regard to Austria was actually carried out within a little over four months from the date of the meeting, and within less than a year the first portion of Czechoslovakia was absorbed, and Bohemia and Moravia a few months later. If any doubts had existed in the minds of any of his hearers in November 1937, after March of 1939 there could no longer be any question that Hitler was in deadly earnest in his decision to resort to war. The Tribunal is satisfied that Lt.-Col. Hoszbach's account of the meeting is substantially correct, and that those present knew that Austria and Czechoslovakia would be annexed by Germany at the first possible opportunity.

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11.42 AM.

THE SEIZURE OF AUSTRIA

The invasion of Austria was a pre-meditated aggressive step in furthering the plan to wage aggressive wars against other countries. As a result Germany's flank was protected, that of Czechoslovakia being greatly weakened. The first step had been taken in the seizure of "Lebensraum"; many new divisions of trained fighting men had been acquired; and with the seizure of foreign exchange reserves, the re-armament programme had been greatly strengthened.

On the 21st May 1935 Hitler announced in the Reichstag that Germany did not intend either to attack Austria or to interfere in her internal affairs. On the 1st May 1936 he publicly coupled Czechoslovakia with Austria in his avowal of peaceful intentions; and so late as the 11th July 1936 he recognised by treaty the full sovereignty of Austria.

Austria was in fact seized by Germany in the month of March 1938. For a number of years before that date, the National Socialists in Germany had been co-operating with the National Socialists of Austria with the ultimate object of incorporating Austria into the German Reich. The Putsch of July 25th 1934, which resulted in the assassination of Chancellor Dollfuss, had the seizure of Austria as its object; but the Putsch failed, with the consequence that the National Socialist Party was outlawed in Austria. On the 11th July 1936 an agreement was entered into between the two countries, Article 1 of which stated:

> "The German Government recognises the full sovereignty of the Federated State of Austria in the spirit of the pronouncements of the German Fuehrer and Chancellor of the 21st May 1935."

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Article 2 declared:

> "Each of the two Governments regards the inner political orders (including the question of Austrian National Socialism) obtaining in the other country as an internal affair of the other country, upon which it will exercise neither direct nor indirect influence."

The National Socialist movement in Austria however continued its illegal activities under cover of secrecy; and the National Socialists of Germany gave the Party active support. The resulting "incidents" were seized upon by the German National Socialists as an excuse for interfering in Austrian affairs. After the conference of the 5th November 1937, these "incidents" rapidly multiplied. The relationship between the two countries steadily worsened, and finally the Austrian Chancellor Schuschnigg was persuaded by the defendant von Papen and others to seek a conference with Hitler, which took place at Berchtesgaden on the 12th February 1938. The defendant Keitel was present at the conference, and Dr. Schuschnigg was threatened by Hitler with an immediate invasion of Austria. Schuschnigg finally agreed to grant a political amnesty to various Nazis convicted of crime, and to appoint the Nazi Seyss-Inquart as Minister of the Interior and Security with control of the Police. On the 9th March 1938, in an attempt to preserve the independence of his country, Dr. Schuschnigg decided to hold a plebiscite on the question of Austrian independence, which was fixed for the 13th March 1938. Hitler, two days later, sent an ultimatum to Schuschnigg that the plebiscite must be withdrawn. In the afternoon and evening of the 11th March 1938 the defendant Goering made a series of demands upon the Austrian Government, each backed up by the threat of invasion. After Schuschnigg had agreed to the cancellation of the plebiscite, another demand was put forward that Schuschnigg must resign, and that the defendant Seyss-Inquart should be appointed Chancellor.

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In consequence, Schuschnigg resigned, and President Miklas, after at first refusing to appoint Seyss-Inquart as Chancellor, gave way and appointed him.

Meanwhile Hitler had given the final order for the German troops to cross the border at dawn on the 12th and instructed Seyss-Inquart to use formations of Austrian National Socialists to depose Miklas and seize control of the Austrian Government. After the order to march had been given to the German troops, Goering telephoned the German Embassy in Vienna and dictated a telegram which he wished Seyss-Inquart to send to Hitler to justify the military action which had already been ordered. It was:

> "The provisional Austrian Government, which, after the dismissal of the Schuschnigg Government, considers it its task to establish peace and order in Austria, sends to the German Government the urgent request to support it in its task and to help it to prevent bloodshed. For this purpose it asks the German Government to send German troops as soon as possible."

Keppler, an official of the German Embassy, replied:

> "Well, SA and SS are marching through the streets, but everything is quiet.

After some further discussion, Goering stated:

> "Please show him (Seyss-Inquart) the text of the telegram, and do tell him that we are asking him - well, he doesn't even have to send the telegram. All he needs to do is to say 'Agreed'."

Seyss-Inquart never sent the telegram; he never even telegraphed "Agreed."

It appears that as soon as he was appointed Chancellor, some time after 10 p.m., he called Keppler and told him to call up Hitler and transmit his protests against the occupation. This action outraged the defendant Goering, because "it would disturb the rest of the Fuehrer, who wanted to go to Austria the next day." At 11.15 p.m. an official in the Ministry of Propaganda

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telephoned the German Embassy in Vienna and was told by Keppler: "Tell the General Field Marshal that Seyss-Inquart agrees."

At daybreak on the 12th March 1938 German troops marched into Austria, and met with no resistance. It was announced in the German press that Seyss-Inquart had been appointed the successor to Schuschnigg, and the telegram which Goering had suggested, but which was never sent, was quoted to show that Seyss-Inquart had requested the presence of German troops to prevent disorder. On the 13th March 1938 a law was passed for the reunion of Austria in the German Reich. Seyss-Inquart demanded that President Miklas should sign this law, but he refused to do so, and resigned his office. He was succeeded by Seyss-Inquart, who signed the law in the name of Austria. This law was then adopted as a law of the Reich by a Reich Cabinet decree issued the same day, and signed by Hitler and the defendants Goering, Frick, von Ribbentrop and Hess.

It was contended before the Tribunal that the annexation of Austria was justified by the strong desire expressed in many quarters for the union of Austria and Germany; that there were many matters in common between the two peoples that made this union desirable; and that in the result the object was achieved without bloodshed.

These matters, even if true, are really immaterial, for the facts plainly prove that the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered. Moreover, none of these considerations appear from the Hoszbach account of the meetings of the 5th November

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1937 to have been the motives which actuated Hitler; on the contrary, all the emphasis is there laid on the advantage to be gained by Germany in her military strength by the annexation of Austria.

THE SEIZURE OF CZECHOSLOVAKIA

The conference of the 5th November 1937 made it quite plain that the seizure of Czechoslovakia by Germany had been definitely decided upon. The only question remaining was the selection of the suitable moment to do it. On the 4th March 1938 the defendant Ribbentrop wrote to the defendant Keitel with regard to a suggestion made to Ribbentrop by the Hungarian Ambassador in Berlin, that possible war aims against Czechoslovakia should be discussed between the German and Hungarian armies. In the course of this letter Ribbentrop said:

> "I have many doubts about such negotiations. In case we should discuss with Hungary possible war aims against Czechoslovakia, the danger exists that other parties as well would be informed about this."

On the 11th March 1938 Goering made two separate statements to M. Mastny, the Czechoslovak Minister in Berlin, assuring him that the developments then taking place in Austria would in no way have any detrimental influence on the relations between the German Reich and Czechoslovakia, and emphasised the continued earnest endeavour on the part of the Germans to improve those mutual relations. On the 12th March, Goering asked M. Mastny to call on him, and repeated these assurances.

This design to keep Czechoslovakia quiet whilst Austria was absorbed was a typical manoeuvre on the part of the defendant Goering, which he was to repeat later in the case of Poland, when he made the most strenuous

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efforts to isolate Poland in the impending struggle. On the same day, the 12th March, the defendant von Neurath spoke with M. Mastny, and assured him on behalf of Hitler that Germany still considered herself bound by the German-Czechoslovak arbitration convention concluded at Locarno in October 1935. 1925

The evidence shows that after the occupation of Austria by the German Army on the 12th March, and the annexation of Austria on the 13th March, Conrad Henlein, who was the leader of the Sudeten German party in Czechoslovakia, saw Hitler in Berlin on the 28th March. On the following day, at a conference in Berlin, when Ribbentrop was present with Henlein, the general situation was discussed, and ~~on the 11th April 1938~~ later the defendant Jodl recorded in his diary:

> "After the annexation of Austria the Fuehrer mentions that there is no hurry to solve the Czech question, because Austria has to be digested first. Nevertheless, preparations for Case Gruen (that is, the plan against Czechoslovakia) will have to be carried out energetically; they will have to be newly prepared on the basis of the changed strategic position because of the annexation of Austria."

On the 21st April 1938 a discussion took place between Hitler and the defendant Keitel with regard to "Case Gruen", showing quite clearly that the preparations for the attack on Czechoslovakia were being fully considered. On the 28th May 1938 Hitler ordered that preparations should be made for military action against Czechoslovakia by the 2nd October, and from then onwards the plan to invade Czechoslovakia was constantly under review. On the 30th May 1938 a directive signed by Hitler declared his "unalterable decision to smash Czechoslovakia by military action in the near future."

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In June 1938, as appears from a captured document taken from the files of the SD in Berlin, an elaborate plan for the employment of the SD in Czechoslovakia had been proposed. This plan provided that "the SD follow, if possible, immediately after the leading troops, and take upon themselves the duties similar to their tasks in Germany . . . "

Gestapo officials were assigned to co-operate with the SD in certain operations. Special agents were to be trained beforehand to prevent sabotage, and these agents were to be notified "before the attack in due time .. in order to give them the possibility to hide themselves, avoid arrest and deportation . . ."

> "At the beginning, guerilla or partisan warfare is to be expected, therefore weapons are necessary...."

Files of information were to be compiled with notations as follows: "To arrest" . . . "To liquidate" . . . "To confiscate" . . . "To deprive of passport" etc.

The plan provided for the temporary division of the country into larger and smaller territorial units, and considered various "suggestions", as they were termed, for the incorporation into the German Reich of the inhabitants and districts of Czechoslovakia. The final "suggestion" included the whole country, together with Slovakia and Carpathian Russia, with a population of nearly 15 millions.

The plan was modified in some respects in September after the Munich Conference, but the fact that the plan existed in such exact detail and was couched in such war-like language indicated a calculated design to resort to force.

On the 31st August 1938 Hitler approved a memorandum by Jodl dated

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24th August 1938, concerning the timing of the order for the invasion of Czechoslovakia and the question of defence measures. This memorandum contained the following:

> "Operation Gruen will be set in motion by means of an 'incident' in Czechoslovakia, which will give Germany provocation for military intervention. The fixing of the exact time for this incident is of the utmost importance."

These facts demonstrate that the occupation of Czechoslovakia had been planned in detail long before the Munich conference.

In the month of September 1938 the conferences and talks with military leaders continued. In view of the extraordinarily critical situation which had arisen, the British Prime Minister, Mr. Chamberlain, flew to Munich and then went to Berchtesgaden to see Hitler. On the 22nd September Mr. Chamberlain met Hitler for further discussions at Bad Godesberg. On the 26th September 1938 Hitler said in a speech in Berlin, with reference to his conversation:

> "I assured him, moreover, and I repeat it here, that when this problem is solved there will be no more territorial problems for Germany in Europe; and I further assured him that from the moment when Czechoslovakia solves its other problems, that is to say, when the Czechs have come to an arrangement with their other minorities, peacefully and without oppression, I will be no longer interested in the Czech State, and that as far as I am concerned I will guarantee it. We don't want any Czechs."

On the 29th September 1938, after a conference between Hitler and Mussolini and the British and French Prime Ministers in Munich, the Munich Pact was signed, by which Czechoslovakia was required to acquiesce in the cession of the Sudetenland to Germany. The "piece of paper" which the

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British Prime Minister brought back to London, signed by himself and Hitler, expressed the hope that for the future Britain and Germany might live without war. That Hitler never intended to adhere to the Munich Agreement is shown by the fact that a little later he asked the defendant Keitel for information with regard to the military force which in his opinion would be required to break all Czech resistance in Bohemia and Moravia. Keitel gave his reply on the 11th October 1938. On the 21st October 1938 a directive was issued by Hitler, and countersigned by the defendant Keitel, to the armed forces on their future tasks, which stated:

> "Liquidation of the remainder of Czechoslovakia. It must be possible to smash at any time the remainder of Czechoslovakia if her policy should become hostile towards Germany."

It is not necessary to review the evidence of the months which immediately followed. On the 14th March 1939 the Czech President Hacha and his Foreign Minister Chvalkovsky came to Berlin at the suggestion of Hitler, and attended a meeting at which the defendants Ribbentrop, Goering and Keitel were present, with others. The proposal was made to Hacha that if he would sign an agreement consenting to the incorporation of the Czech people in the German Reich at once, Bohemia and Moravia would be saved from destruction. He was informed that German troops had already received orders to march and that any resistance would be broken with physical force. The defendant Goering added the threat that he would destroy Prague completely from the air. Faced by this dreadful alternative, Hacha and his Foreign Minister put their signatures to the necessary agreement at 4.30 in the morning, and Hitler and Ribbentrop signed on behalf of Germany.

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On the 15th March German troops occupied Bohemia and Moravia, and on the 16th March the German decree was issued incorporating Bohemia and Moravia in the Reich as a protectorate, and this decree was signed by the defendants Ribbentrop and Frick.

THE AGGRESSION AGAINST POLAND.

By March 1939 the plan to annex Austria and Czechoslovakia, which had been discussed by Hitler at the meeting of the 5th November 1937, had been accomplished. The time had now come for the German leaders to consider further acts of aggression, made more possible of attainment because of that accomplishment.

On the 23rd May 1939 a meeting was held in Hitler's study in the new Reich Chancellery in Berlin. Hitler announced his decision to attack Poland and gave his reasons, and discussed the effect the decision might have on other countries. In point of time, this was the second of the important meetings to which reference has already been made, and in order to appreciate the full significance of what was said and done, it is necessary to state shortly some of the main events in the history of German-Polish relations.

As long ago as the year 1925 an Arbitration Treaty between Germany and Poland had been made at Locarno, providing for the settlement of all disputes between the two countries. On the 26th January 1934, a German-Polish declaration of non-aggression was made, signed on behalf of the German Government by the defendant von Neurath. On the 30th January 1934, and again on the 30th January 1937, Hitler made speeches in the Reichstag in which he

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expressed his view that Poland and Germany could work together in harmony and peace. On the 20th February 1938 Hitler made a third speech in the Reichstag, in the course of which he said with regard to Poland:

> "And so the way to a friendly understanding has been successfully ~~opened~~ PAVED, an understanding which, beginning with Danzig, has to-day, in spite of the attempts of certain mischief makers, succeeded in finally taking the poison out of the relations between Germany and Poland and transforming them into a sincere, friendly co-operation. Relying on her friendships, Germany will not leave a stone unturned to save that ideal which provides the foundation for the task which is ahead of us - peace."

On the 26th September 1938, in the middle of the crisis over the Sudetenland, Hitler made the speech in Berlin which has already been quoted, and announced that he had informed the British Prime Minister that when the Czechoslovakian problem was solved there would be no more territorial problems for Germany in Europe. Nevertheless, on the 24th November of the same year, an OKW directive was issued to the German armed forces to make preparations for an attack upon Danzig; it stated:

> "The Fuehrer has ordered:
> (1) Preparations are also to be made to enable the Free State of Danzig to be occupied by German troops by surprise."

In spite of having ordered military preparations for the occupation of Danzig, Hitler, on the 30th January 1939, said in a speech in the Reichstag:

> "During the troubled months of the past year, the friendship between Germany and Poland has been one of the re-assuring factors in the political life of Europe."

Five days previously, on the 25th January 1939, Ribbentrop said in the

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course of a speech in Warsaw:

> "Thus Poland and Germany can look forward to the future with full confidence in the solid basis of their mutual relations."

Following on the occupation of Bohemia and Moravia by Germany on the 15th March 1939, which was a flagrant breach of the Munich Agreement, Great Britain gave an assurance to Poland on the 31st March 1939 that in the event of any action which clearly threatened Polish independence, and which the Polish Government accordingly considered it vital to resist with their national forces, Great Britain would feel itself bound at once to lend Poland all the support in its power. The French Government took the same stand. It is interesting to note in this connection, that one of the arguments frequently presented by the defence in the present case is that the defendants were induced to think that their conduct was not in breach of international law by the acquiescence of other Powers. The declarations of Great Britain and France showed, at least, that this view could be held no longer.

On the 3rd April 1939 a revised OKW directive was issued to the armed forces, which after referring to the question of Danzig made reference to Fall Weiss (the military code name for the German invasion of Poland) and stated:

> "The Fuehrer has added the following directions to Fall Weiss:
> (1) Preparations must be made in such a way that the operation can be carried out at any time from the 1st September 1939 onwards.
> (2) The High Command of the Armed Forces has been directed to draw up a precise timetable for Fall Weiss and to arrange by conferences the synchronised timings between the three branches of the Armed Forces."

On the 11th April 1939, a further directive was signed by Hitler and issued to the armed forces, and in one of the annexes to that document the

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words occur:

> "Quarrels with Poland should be avoided. ~~but~~ Should Poland adopt a threatening attitude towards Germany, however "a final settlement" will be necessary, notwithstanding the pact with Poland. The aim is then to destroy Polish military strength, and to create in the East a situation which satisfies the requirements of defence. The Free State of Danzig will be incorporated into Germany at the outbreak of the conflict at the latest. Policy aims at limiting the war to Poland, and this is considered possible in view of the internal crisis in France, and British restraint as a result of this."

In spite of the contents of these two directives, Hitler made a speech in the Reichstag on the 28th April 1939 in which, after describing the Polish Government's alleged rejection of an offer he had made with regard to Danzig and the Polish Corridor, he stated:

> "I have regretted greatly this incomprehensible attitude of the Polish Government, but that alone is not the decisive fact; the worst is that now Poland like Czechoslovakia a year ago believes, under the pressure of a lying international campaign, that it must call up troops, although Germany on her part has not called up a single man, and had not thought of proceeding in any way against Poland... The intention to attack on the part of Germany was merely invented by the international Press:", which

It was four weeks after making this speech that Hitler, on the 23rd May 1939, held the important military conference to which reference has already been made. Among the persons present were the defendants Goering, Raeder and Keitel. The adjutant on duty that day was Lieut.-Col. Schmundt, and he made a record of what happened, certifying it with his signature as a correct record.

The purpose of the meeting was to enable Hitler to inform the heads of the armed forces and their staffs of his views on the political situation and his future aims. After analysing the political situation and reviewing the

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course of events since 1933, Hitler announced his decision to attack Poland. He admitted that the quarrel with Poland over Danzig was not the reason for this attack, but the necessity for Germany to enlarge her living space and secure her food supplies. He said:

> "The solution of the problem demands courage. The principle by which one evades solving the problem by adapting oneself to circumstances is inadmissible. Circumstances must rather be adapted to ~~oneself~~. eing. This is impossible without invasion of foreign states or attacks upon foreign property."

Later in his address he added:

> "There is therefore no question of sparing Poland, and we are left with the decision to attack Poland at the first suitable opportunity. We cannot expect a repetition of the Czech affair. There will be war. Our task is to isolate Poland. The success of the isolation will be decisive... The isolation of Poland is a matter of skilful politics."

Lt.-Col. Schmundt's record of the meeting reveals that Hitler fully realised the possibility of Great Britain and France coming to Poland's assistance. If, therefore, the isolation of Poland could not be achieved, Hitler was of the opinion that Germany should attack Great Britain and France first, or at any rate should concentrate primarily on the war in the West, in order to defeat Great Britain and France quickly, or at least to destroy their effectiveness. Nevertheless, Hitler stressed that war with England and France would be a life and death struggle, which might last a long time, and that preparations must be made accordingly.

During the weeks which followed this conference other meetings were held and directives issued in preparation for the war. The defendant

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Ribbentrop was sent to Moscow to negotiate a non-aggression pact with the Soviet Union.

On the 22nd August 1939 there took place the important meeting of that day, to which reference has already been made. The Prosecution have put in evidence two unsigned captured documents which appear to be records made of this meeting by persons who were present. The first document is headed: "The Fuehrer's speech to the Commanders-in-Chief on the 22nd August 1939..." The purpose of the speech was to announce the decision to make war on Poland at once, and Hitler began by saying:

> "It was clear to me that a conflict with Poland had to come sooner or later. I had already made this decision in the spring, but I thought I would first turn against the West in a few years, and only afterwards against the East... I wanted to establish an acceptable relationship with Poland in order to fight first against the West. But this plan, which was agreeable to me, could not be executed since essential points have changed. It became clear to me that Poland would attack us in case of a conflict with the West."

that.

Hitler then went on to explain why he had decided that the most favourable moment had arrived for starting the war. "Now," said Hitler, "Poland is in the position in which I wanted her ... I am only afraid that at the last moment some Schweinehund will make a proposal for mediation ... A beginning has been made for the destruction of England's hegemony."

This document closely resembles one of the documents put in evidence on behalf of the defendant Raeder. This latter document consists of a summary of the same speech, compiled on the day it was made, by one Admiral Boehm, from notes he had taken during the meeting. In substance it

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says that the moment had arrived to settle the dispute with Poland by military invasion, that although a conflict between Germany and the West was unavoidable in the long run, the likelihood of Great Britain and France coming to Poland's assistance was not great, and that even if a war in the West should come about, the first aim should be the crushing of the Polish military strength. It also contains a statement by Hitler that an appropriate propaganda reason for invading Poland would be given, the truth or falsehood of which was unimportant, since "the Right lies in Victory."

The second unsigned document put in evidence by the Prosecution is headed: "Second Speech by the Fuehrer on the 22nd August 1939", and is in the form of notes of the main points made by Hitler. Some of these are as follows:

> "Everybody shall have to make a point of it that we WERE ~~are~~ determined from the beginning to fight the Western Powers. Struggle for life or death ... destruction of Poland in the foreground. The aim is elimination of living forces, not the arrival at a certain line. Even if war should break out in the West, the destruction of Poland ~~should~~ be the SHALL primary object ive... I shall give a propagandist cause for starting the war - never mind whether it be plausible or not. The victor shall not be asked later on whether we told the truth or not. In starting and making a war, not the Right is what matters, but Victory ... The start will be ordered probably by Saturday ~~night~~ MORNING." (That is to say, the 26th August.)

In spite of it being described as a second speech, there are sufficient points of similarity with the two previously mentioned documents to make it appear very probable that this is an account of the same speech, not as detailed as the other two, but in substance the same.

These three documents establish that the final decision as to the date

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of Poland's destruction, which had been agreed upon and planned earlier in the year, was reached by Hitler shortly before the 22nd August 1939. They also show that although he hoped to be able to avoid having to fight Great Britain and France as well, he fully realised there was a risk of this happening, but it was a risk which he was determined to take.

The events of the last days of August confirm this determination. On the 22nd August 1939, the same day as the speech just referred to, the British Prime Minister wrote a letter to Hitler, in which he said:

> "Having thus made our position perfectly clear, I wish to repeat to you my conviction that war between our two peoples would be the greatest calamity that could occur."

On the 23rd August Hitler replied:

> "The question of the treatment of European problems on a peaceful basis is not a decision which rests with Germany, but primarily on those who since the crime committed by the Versailles Diktat have stubbornly and consistently opposed any peaceful revision. Only after a change of spirit on the part of the responsible Powers can there be any real change in the relationship between England and Germany."

There followed a number of appeals to Hitler to refrain from forcing the Polish issue to the point of war. These were from President Roosevelt on the 24th and 25th August; from His Holiness the Pope on the 24th and 31st August; and from M. Daladier, the Prime Minister of France, on the 26th August. All these appeals fell on deaf ears.

On the 25th August Great Britain signed a pact of mutual assistance with Poland, which reinforced the undertaking she had given to Poland earlier in the year. This coupled with the news of Mussolini's unwillingness

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to enter the war on Germany's side, made Hitler hesitate for a moment. The invasion of Poland, which was timed to start on the 26th August, was postponed until a further attempt had been made to persuade Great Britain not to intervene. Hitler offered to enter into a comprehensive agreement with Great Britain, once the Polish question had been settled. In reply to this, Great Britain made a counter-suggestion for the settlement of the Polish dispute by negotiation. On the 29th August Hitler informed the British Ambassador that the German Government, though sceptical as to the result, would be prepared to enter into direct negotiations with a Polish emissary, provided he arrived in Berlin with plenipotentiary powers by midnight for the following day, August 30th. The Polish Government were informed of this, but with the example of Schuschnigg and Hacha before them, they decided not to send such an emissary. At midnight on the 30th August the defendant Ribbentrop read to the British Ambassador at top speed a document containing the first precise formulation of the German demands against Poland. He refused, however, to give the Ambassador a copy of this, and stated that in any case it was too late now, since no Polish plenipotentiary had arrived.

In the opinion of the Tribunal, the manner in which these negotiations were conducted by Hitler and Ribbentrop showed that they were not entered into in good faith or with any desire to maintain peace, but solely in the attempt to prevent Great Britain and France from honouring their obligations to Poland.

Parallel with these negotiations were the unsuccessful attempts made by Goering to effect the isolation of Poland by persuading Great Britain not to

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stand by her pledged word, through the services of one Birger Dahlerus, a Swede. Dahlerus, who was called as a witness by Goering, had a considerable knowledge of England and things English, and in July 1939 was anxious to bring about a better understanding between England and Germany, in the hope of preventing a war between the two countries. He got into contact with Goering as well as with official circles in London, and during the latter part of August, Goering used him as an unofficial intermediary to try and deter the British Government from their opposition to Germany's intentions towards Poland. Dahlerus, of course, had no knowledge at the time of the decision which Hitler had secretly announced on the 22nd August, nor of the German military directives for the attack on Poland which were already in existence. As he admitted in his evidence, it was not until the 26th September, after the conquest of Poland was virtually complete, that he first realised that Goering's aim all along had been to get Great Britain's consent to Germany's seizure of Poland.

After all attempts to persuade Germany to agree to a settlement of her dispute with Poland on a reasonable basis had failed, Hitler, on the 31st August, issued his final directive, in which he announced that the attack on Poland would start in the early morning of the 1st September, and gave instructions as to what action would be taken if Great Britain and France should enter the war in defence of Poland.

In the opinion of the Tribunal, the events of the days immediately preceding the 1st September 1939 demonstrate the determination of Hitler and his associates to carry out the declared intention of invading Poland at all costs,

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despite appeals from every quarter. With the ever increasing evidence before him that this intention would lead to war with Great Britain and France as well, Hitler was resolved not to depart from the course he had set for himself. The Tribunal is fully satisfied by the evidence that the war initiated by Germany against Poland on the 1st September 1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity.

Falco Legas.

12 29 P.M.

THE INVASION OF DENMARK AND NORWAY.

The aggressive war against Poland was but the beginning. The aggression of Nazi Germany quickly spread from country to country. In point of time the first two countries to suffer were Denmark and Norway.

On the 31st May 1939 a Treaty of Non-Aggression was made between Germany and Denmark, and signed by the defendant Ribbentrop. It was there solemnly stated that the parties to the Treaty were "firmly resolved to maintain peace between Denmark and Germany in all circumstances." Nevertheless, Germany invaded Denmark on the 9th April, 1940.

On the 2nd September 1939, after the outbreak of war with Poland, Germany sent a solemn assurance to Norway in these terms:

> "The German Reich Government is determined, in view of the friendly relations which existed between Norway and Germany, under no circumstance to prejudice the inviolability and integrity of Norway, and to respect the territory of the Norwegian State. In making this declaration the Reich Government naturally expects, on its side, that Norway will observe an unimpeachable neutrality towards the Reich and will not

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> tolerate any breaches of Norwegian neutrality by any third party which might occur. Should the attitude of the Royal Norwegian Government differ from this so that any such breach of neutrality by a third party occurs, the Reich Government would then obviously be compelled to safeguard the interests of the Reich in such a way as the resulting situation might dictate."

On the 9th April 1940, in pursuance of her plan of campaign, Norway was invaded by Germany.

The idea of attacking Norway originated, it appears, with the defendants Raeder and Rosenberg. On the 3rd October 1939 Raeder prepared a memorandum on the subject of "gaining bases in Norway", and amongst the questions discussed was the question: "Can bases be gained by military force against Norway's will, if it is impossible to carry this out without fighting?" Despite this fact, three days leter, further assurances were given to Norway by Germany, which stated:

> "Germany has never had any conflicts of interest or even points of controversy with the Northern States, neither has she any to-day."

Three days later again, the defendant Doenitz prepared a memorandum on the same subject, of bases in Norway, and suggested the establishment of a base in Trondheim with an alternative of supplying fuel in Narvik. At the same time the defendant Raeder was in correspondence with Admiral Karls, who pointed out to him the importance of an occupation of the Norwegian coast by Germany. On the 10th October Raeder reported to Hitler the disadvantages to Germany which an occupation by the British would have. In the months of October and November Raeder continued to work on the possible occupation of Norway, in conjunction with the "Rosenberg Organisation." The "Rosenberg

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Organisation" was the Foreign Affairs Bureau of the NSDAP, and Rosenberg as Reichsleiter was in charge of it. Early in December, Quisling, the notorious Norwegian traitor, visited Berlin and was seen by the defendants Rosenberg and Raeder. He put forward a plan for a coup d'état in Norway. On the 12th December, the defendant Raeder and the naval staff, together with the defendants Keitel and Jodl, had a conference with Hitler, when Raeder reported on his interview with Quisling, and set out Quisling's views. On the 16th December Hitler himself interviewed Quisling on all these matters. In the report of the activities of the Foreign Affairs Bureau of the NSDAP for the years 1933-1943, under the heading of "Political preparations for the military occupation of Norway" it is stated that at the interview with Quisling Hitler said that he would prefer a neutral attitude on the part of Norway as well as the whole of Scandinavia, as he did not desire to extend the theatre of war, or to draw other nations into the conflict. If the enemy attempted to extend the war he would be compelled to guard himself against that undertaking. He promised Quisling financial support, and assigned to a special military staff the examination of the military questions involved.

On the 27th January 1940 a memorandum was prepared by the defendant Keitel re the plans for the invasion of Norway. On the 28th February 1940 the defendant Jodl entered in his diary:

> "I proposed first to the Chief of OKW and then to the Fuehrer that "Case Yellow" (that is the operation against the Netherlands) and Weser Exercise (that is the operation against Norway and Denmark) must be prepared in such a way that they will be independent of one another as regards both time and forces employed."

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On the 1st March Hitler issued a directive re the Weser Exercise which contained the words:

> "The development of the situation in Scandinavia requires the making of all preparations for the occupation of Denmark and Norway by a part of the German Armed Forces. This operation should prevent British encroachment on Scandinavia and the Baltic; further, it should guarantee our ore base in Sweden and give our Navy and Air Force a wider start line against Britain ... The crossing of the Danish border and the landings in Norway must take place simultaneously ... It is most important that the Scandinavian States as well as the Western opponents should be taken by surprise by our measures."

On the 24th March the naval operation orders for the Weser Exercise were issued, and on the 30th March the defendant Doenitz as Commander-in-Chief of U-boats issued his operational order for the occupation of Denmark and Norway. On the 9th April 1940 the German forces invaded Norway and Denmark.

From this narrative it is clear that as early as October 1939 the question of invading Norway was under consideration. The defence that has been made here is that Germany was compelled to attack Norway to forestall an Allied invasion, and her action was therefore preventive.

It must be remembered that preventive action in foreign territory is justified only in case of "an instant and overwhelming necessity for self-defence, leaving no choice of means, and no moment of deliberation." (The Caroline Case, 1808.6.C.Rob.461). How widely the view was held in influential German circles that the Allies intended to occupy Norway cannot be determined with exactitude. Quisling asserted that the Allies would intervene in Norway with the tacit consent of the Norwegian Government. The German Legation at Oslo disagreed with this view, although the Naval Attache at that Legation shared it.

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The War Diary of the German Naval Operations Staff for January 13th 1940 stated that the Chief of the Naval Operations Staff thought that the most favourable solution would be the maintenance of the neutrality of Norway, but he harboured the firm conviction that England intended to occupy Norway in the near future relying on the tacit agreement of the Norwegian Government.

The directive of Hitler issued on March 1st 1940 for the attack on Denmark and Norway stated that the operation "should prevent British encroachment on Scandinavia and the Baltic."

It is, however, to be remembered that the defendant Raeder's memorandum of the 3rd October 1939 makes no reference to forestalling the Allies, but is based upon "the aim of improving our strategical and operational position."

The memorandum itself is headed "Gaining of Bases in Norway". The same observation applies mutatis mutandis to the memorandum of the defendant Doenitz of October 9th 1939.

Furthermore, on the 13th March the defendant Jodl recorded in his diary:

> "Fuehrer does not give order yet for 'W' (Weser Exercise). He is still looking for an excuse." (Justification?)

On the 14th March 1940 he again wrote:

> "Fuehrer has not yet decided what reason to give for 'Weser Exercise'".

On the 21st March 1940 he recorded the misgivings of Task Force XXI about the long interval between taking up readiness positions and the close of the diplomatic negotiations, and added:

> "Fuehrer rejects any earlier negotiations, as otherwise calls for help go out to England and America. If resistance is put up it must be ruthlessly broken."

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On April 2nd he records that all the preparations are completed; on April 4th the Naval Operational Order was issued; and on the 9th April the invasion was begun.

From all this it is clear that when the plans for an attack on Norway were being made, they were not made for the purpose of forestalling an imminent Allied landing, but, at the most, that they might prevent an Allied occupation at some future date.

When the final orders for the German invasion of Norway were given, the diary of the Naval Operations Staff for March 23rd 1940 records:

> "A mass encroachment by the English into Norwegian territorial waters ... is not to be expected at the present time."

And Admiral Assmann's entry for March 26th says:

> "British landing in Norway not considered serious."

Documents which were subsequently captured by the Germans are relied on to show that the Allied plan to occupy harbours and airports in Western Norway was a definite plan, although in all points considerably behind the German plans under which the invasion was actually carried out. These documents indicate that an altered plan had been finally agreed upon on March 20th 1940, that a convoy should leave England on April 5th, and that mining in Norwegian waters would begin the same day; and that on April 5th the sailing time had been postponed until April 8th. But these plans were not the cause of the German invasion of Norway. Norway was occupied by Germany to afford her bases from which a more effective attack on England and France might be made, pursuant to plans prepared long in advance of the Allied plans which are now relied on to support the argument of self-defence.

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It was further argued that Germany alone could decide, in accordance with the reservations made by many of the Signatory Powers at the time of the conclusion of the Briand-Kellogg Pact, whether preventive action was a necessity, and that in making her decision her judgment was conclusive. But whether action taken under the claim of self-defence was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is ever to be enforced.

No suggestion is made by the defendants that there was any plan by any belligerent, other than Germany, to occupy Denmark. No excuse for that aggression has ever been offered.

As the German armies entered Norway and Denmark, German memoranda were handed to the Norwegian and Danish Governments which gave the assurance that the German troops did not come as enemies, that they did not intend to make use of the points occupied by German troops as bases for operations against England, as long as they were not forced to do so by measures taken by England and France, and that they had come to protect the North against the proposed occupation of Norwegian strong points by English-French forces.

The memoranda added that Germany had no intention of infringing the territorial integrity and political independence of the Kingdom of Norway then or in the future. Nevertheless, on the 3rd of June 1940, a German Naval memorandum discussed the use to be made of Norway and Denmark, and put forward one solution for consideration, that the territories of Denmark and Norway acquired during the course of the war should continue to be occupied and

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organised so that they could in future be considered as German possessions.

In the light of all the available evidence it is impossible to accept the contention that the invasions of Denmark and Norway were defensive, and in the opinion of the Tribunal they were acts of aggressive war.

THE INVASION OF BELGIUM, THE NETHERLANDS AND LUXEMBURG.

The plan to seize Belgium and the Netherlands was considered in August 1938, when the attack on Czechoslovakia was being formulated, and the possibility of war with France and England was contemplated. The advantage to Germany of being able to use these countries for their own purposes, particularly as air bases in the war against England and France, was emphasised. In May of 1939, when Hitler made his irrevocable decision to attack Poland, and foresaw the possibility at least of a war with England and France in consequence, he told his military commanders:

> "Dutch and Belgian air bases must be occupied ...
> Declarations of neutrality must be ignored."

On August 22nd in the same year, he told his military commanders that England and France, in his opinion, would not "violate the neutrality of these countries." At the same time he assured Belgium and Holland and Luxemburg that he would respect their neutrality; and on the 6th October 1939, after the Polish campaign, he repeated this assurance. On the 7th October General von Brauchitsch directed Army Group B to prepare "for the immediate invasion of Dutch and Belgian territory, if the political situation so demands." In a series of orders, which were signed by the defendants Keitel and Jodl, the attack was fixed for the 10th November 1939, but it was postponed from time to time until May of 1940 on account of weather conditions and transport problems.

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At the conference on the 23rd November 1939 Hitler said:

> "We have an Achilles heel: The Ruhr. The progress of the war depends on the possession of the Ruhr. If England and France push through Belgium and Holland into the Ruhr, we shall be in the greatest danger ... Certainly England and France will assume the offensive against Germany when they are armed. England and France have means of pressure to bring Belgium and Holland to request English and French help. In Belgium and Holland the sympathies are all for France and England ... If the French army marches into Belgium in order to attack us, it will be too late for us. We must anticipate them ... We shall sow the English coast with mines which cannot be cleared. This mine warfare with the Luftwaffe demands a different starting point. England cannot live without its imports. We can feed ourselves. The permanent sowing of mines on the English coasts will bring England to her knees. However, this can only occur if we have occupied Belgium and Holland ... My decision is unchangeable; I shall attack France and England at the most favourable and quickest moment. Breach of the neutrality of Belgium and Holland is meaningless. No one will question that when we have won. We shall not bring about the breach of neutrality as idiotically as it was in 1914. If we do not break the neutrality, then England and France will. Without attack, the war is not to be ended victoriously."

On the 10th May 1940 the German forces invaded the Netherlands, Belgium and Luxemburg. On the same day the German Ambassadors handed to the Netherlands and Belgian Governments a memorandum alleging that the British and French armies, with the consent of Belgium and Holland, were planning to march through those countries to attack the Ruhr, and justifying the invasion on these grounds. Germany, however, assured the Netherlands and Belgium that their integrity and their possessions would be respected. A similar memorandum was delivered to Luxemburg on the same date.

There is no evidence before the Tribunal to justify the contention that the Netherlands, Belgium and Luxemburg were invaded by Germany because

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their occupation had been planned by England and France. British and French staffs had been co-operating in making certain plans for military operations in the Low Countries, but the purpose of this planning was to defend these countries in the event of a German attack.

The invasion of Belgium, Holland and Luxemburg was entirely without justification.

It was carried out in pursuance of policies long considered and prepared, and was plainly an act of aggressive war. The resolve to invade was made without any other consideration than the advancement of the aggressive policies of Germany.

THE AGGRESSION AGAINST YUGOSLAVIA AND GREECE.

On the 12th August 1939 Hitler had a conversation with Ciano and the defendant Ribbentrop at Obersalzberg. He then said:

> "Generally speaking, the best thing to happen would be for the neutrals to be liquidated one after the other. This process could be carried out more easily if on every occasion one partner of the Axis covered the other while it was dealing with the uncertain neutral. Italy might well regard Yugoslavia as a neutral of this kind."

This observation was made only two months after Hitler had given assurances to Yugoslavia that he would regard her frontier as final and inviolable. On the occasion of the visit to Germany of the Prince Regent of Yugoslavia on 1st June 1939, Hitler had said in a public speech:

> "The firmly established reliable relationship of Germany to Yugoslavia now that owing to historical events we have become neighbours with common boundaries fixed for all time, will not only guarantee

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> lasting peace between our two peoples and countries, but can also represent an element of calm to our nerve-racked continent. This peace is the goal of all who are disposed to perform really constructive work."

On the 6th October 1939 Germany repeated these assurances to Yugoslavia, after Hitler and Ribbentrop had unsuccessfully tried to persuade Italy to enter the war on the side of Germany by attacking Yugoslavia. On the 28th October 1940 Italy invaded Greece, but the military operations met with no success. In November Hitler wrote to Mussolini with regard to the invasion of Greece, and the extension of the war in the Balkans, and pointed out that no military operations could take place in the Balkans before the following March, and therefore Yugoslavia must if at all possible be won over by other means, and in other ways. But on the 12th November 1940 Hitler issued a directive for the prosecution of the war, and it included the words:

> "The Balkans: The Commander-in-Chief of the Army will make preparations for occupying the Greek mainland north of the Aegean Sea, in case of need entering through Bulgaria."

On the 13th December he issued a directive concerning the operation "Marita", the code name for the invasion of Greece, in which he stated:

> "1. The result of the battles in Albania is not yet decisive. Because of a dangerous situation in Albania, it is doubly necessary that the British endeavour be foiled to create air bases under the protection of a Balkan front, which would be dangerous above all to Italy as to the Rumanian oilfields.
>
> 2. My plan therefore is (a) to form a slowly increasing task force in Southern Rumania within the next month, (b) after the setting in of favourable weather, probably in March, to send a task force for the occupation of the Aegean north coast by way of Bulgaria and if necessary to occupy the entire Greek mainland."

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On the 20th January 1941, at a meeting between Hitler and Mussolini, at which the defendants Ribbentrop, Keitel, Jodl and others were present, Hitler stated:

> "The massing of troops in Rumania serves a threefold purpose.
> (a) An operation against Greece;
> (b) Protection of Bulgaria against Russia and Turkey;
> (c) Safeguarding the guarantee to Rumania ...
> It is desirable that this deployment be completed without interference from the enemy. Therefore, disclose the game as late as possible. The tendency will be to cross the Danube at the last possible moment, and to line up for attack at the earliest possible moment."

On the 19th February 1941 an OKW directive re the operation "Marita" stated:

> "On the 18th February the Fuehrer made the following decision regarding the carrying out of Operation Marita: The following dates are envisaged: Commencement of building bridge - 28th February: Crossing of the Danube, 2nd March."

On the 3rd March 1941, British troops landed in Greece to assist the Greeks to resist the Italians; and on the 18th March, at a meeting between Hitler and the defendant Raeder, at which the defendants Keitel and Jodl were also present, the defendant Raeder asked for confirmation that the "whole of Greece will have to be occupied, even in the event of a peaceful settlement", to which Hitler replied, "The complete occupation is a prerequisite of any settlement".

On the 25th March, on the occasion of the adherence of Yugoslavia to the Tripartite Pact at a meeting in Vienna, the defendant Ribbentrop, on behalf of the German Government, confirmed the determination of Germany to respect the

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sovereignty and territorial integrity of Yugoslavia at all times. On the 26th March the Yugoslav Ministers, who had adhered to the Tripartite Pact, were removed from office by a coup d'état in Belgrade on their return from Vienna, and the new Government repudiated the pact. Thereupon on 27th March, at a conference in Berlin with the High Command at which the defendants Goering, Keitel and Jodl were present, and the defendant Ribbentrop part of the time, Hitler stated that Yugoslavia was an uncertain factor in regard to the contemplated attack on Greece, and even more so with regard to the attack upon Russia which was to be conducted later on. Hitler announced that he was determined, without waiting for possible loyalty declarations of the new Government, to make all preparations in order to destroy Yugoslavia militarily and as a national unit. He stated that he would act with "unmerciful harshness".

On the 6th April German forces invaded Greece and Yugoslavia without warning, and Belgrade was bombed by the Luftwaffe. So swift was this particular invasion that there had not been time to establish any "incidents" as a usual preliminary, or to find and publish any adequate "political" explanations. As the attack was starting on the 6th April, Hitler proclaimed to the German people that this attack was necessary because the British forces in Greece (who were helping the Greeks to defend themselves against the Italians) represented a British attempt to extend the war to the Balkans.

It is clear from this narrative that aggressive war against Greece and Yugoslavia had long been in contemplation, certainly as early as August of 1939. The fact that Great Britain had come to the assistance of the Greeks, and might thereafter be in a position to inflict great damage upon German

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interests was made the occasion for the occupation of both countries.

THE AGGRESSIVE WAR AGAINST THE UNION OF SOVIET SOCIALIST REPUBLICS.

On the 23rd August 1939 Germany signed the non-aggression pact with the Union of Soviet Socialist Republics.

The evidence has shown unmistakably that the Soviet Union on their part conformed to the terms of this pact; indeed the German Government itself had been assured of this by the highest German sources. Thus, the German Ambassador in Moscow informed his Government that the Soviet Union would go to war only if attacked by Germany, and this statement is recorded in the German War Diary under the date of June 6th 1941.

Nevertheless, as early as the late summer of 1940, Germany began to make preparations for an attack on the USSR, in spite of the non-aggression pact. This operation was secretly planned under the code name "Case Barbarossa", and the former Field Marshal Paulus testified that on the 3rd September 1940, when he joined the German General Staff, he continued developing "Case Barbarossa", which was finally completed at the beginning of November 1940; and that even then, the German General Staff had no information that the Soviet Union were preparing for war.

On the 18th of December 1940 Hitler issued directive No. 21, initialled by Keitel and Jodl, which called for the completion of all preparations connected with the realisation of "Case Barbarossa" by the 15th May 1941. This directive stated:

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"The German armed forces must be prepared to crush Soviet Russia in a quick campaign before the end of the war against England ... Great caution has to be exercised that the intention of an attack will not be recognised."

Before the directive of the 18th December had been made, the defendant Goering had informed General Thomas, chief of the Office of War Economy of the OKW, of the plan, and General Thomas made surveys of the economic possibilities of the USSR including its raw materials, its power and transport system, and its capacity to produce arms.

In accordance with these surveys, an economic staff for the Eastern territories with many military-economic units (inspectorates, Commandos, groups) was created under the supervision of the defendant Goering. In conjunction with the military command, these units were to achieve the most complete and efficient economic exploitation of the occupied territories in the interest of Germany.

The framework of the future political and economic organisation of the occupied territories was designed by the defendant Rosenberg over a period of three months, after conferences with and assistance by the defendants Keitel, Jodl, Raeder, Funk, Goering, Ribbentrop, and Frick or their representatives. It was made the subject of a most detailed report immediately after the invasion.

These plans outlined the destruction of the Soviet Union as an independent State, and its partition, the creation of so-called Reich Commissariats, and the conversion of Esthonia, Latvia, Byelorussia and other territories into German colonies.

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At the same time Germany drew Hungary, Rumania and Finland into the war against the USSR. In December 1940 Hungary agreed to participate on the promise of Germany that she should have certain territories at the expense of Yugoslavia.

In May 1941 a final agreement was concluded with Antonescu, the Prime Minister of Rumania, regarding the attack on the USSR, in which Germany promised to Rumania, Bessarabia, Northern Bukovina and the right to occupy Soviet territory up to the Dnieper.

On the 22nd June 1941, without any declaration of war, Germany invaded Soviet territory in accordance with the plans so long made.

The evidence which has been given before this Tribunal proves that Germany had the design carefully thought out, to crush the USSR as a political and military power, so that Germany might expand to the east according to her own desire. In "Mein Kampf", Hitler had written:

> "If new territory were to be acquired in Europe, it must have been mainly at Russia's cost, and once again the new German Empire should have set out on its march along the same road as was formerly trodden by the Teutonic Knights, this time to acquire soil for the German plough by means of the German sword and thus provide the nation with its daily bread."

But there was a more immediate purpose, and in one of the memoranda of the OKW, that immediate purpose was stated to be to feed the German armies from Soviet territory in the third year of the war, even if "as a result many millions of people will be starved to death if we take out of the country the things necessary for us."

The final aims of the attack on the Soviet Union were formulated at a conference with Hitler on July 16th 1941, in which the defendants Goering,

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Keitel, Rosenberg and Bormann participated:

> "There can be no talk of the creation of a military power west of the Urals, even if we should have to fight 100 years to achieve this ... All the Baltic regions must become part of the Reich. The Crimea and adjoining regions (North of the Crimea) must likewise be incorporated into the Reich. The region of the Volga as well as the BAKU ~~Baku~~ district must likewise be incorporated into the Reich. The Finns want Eastern Karelia. However, in view of the large deposits of nickel, the Kola peninsula must be ceded to Germany."

It was contended for the defendants that the attack upon the USSR was justified because the Soviet Union was contemplating an attack upon Germany, and making preparations to that end. It is impossible to believe that this view was ever honestly entertained.

The plans for the economic exploitation of the USSR, for the removal of masses of the population, for the murder of Commissars and political leaders, were all part of the carefully prepared scheme launched on the 22nd June without warning of any kind, and without the shadow of legal excuse. It was plain aggression.

WAR AGAINST THE UNITED STATES.

Four days after the attack launched by the Japanese on the United States fleet in Pearl Harbour on December 7th 1941, Germany declared war on the United States.

The Tripartite Pact between Germany, Italy and Japan had been signed on the 27th September 1940, and from that date until the attack upon the USSR the defendant Ribbentrop, with other defendants, was endeavouring to induce Japan to attack British possessions in the Far East. This, it was

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thought, would hasten England's defeat, and keep the United States out of the war.

The possibility of a direct attack on the United States was considered and discussed as a matter for the future. Major von Falkenstein, the Luftwaffe Liaison officer with the Operations Staff of the OKW, summarising military problems which needed discussion in Berlin in October of 1940, spoke of the possibility "of the prosecution of the war against America at a later date." It is clear, too, that the German policy of keeping America out of the war, if possible, did not prevent Germany promising support to Japan even against the United States. On the 4th April 1941 Hitler told Matsuoka, the Japanese Foreign Minister, in the presence of the defendant Ribbentrop, that Germany would "strike without delay" if a Japanese attack on Singapore should lead to war between Japan and the United States. The next day Ribbentrop himself urged Matsuoka to bring Japan into the war.

On the 28th November 1941, ~~then~~ ten days before the attack on Pearl Harbour, Ribbentrop encouraged Japan, through her Ambassador in Berlin, to attack Great Britain and the United States, and stated that should Japan become engaged in a war with the United States, Germany would join the war immediately. A few days later, Japanese representatives told Germany and Italy that Japan was preparing to attack the United States, and asked for their support. Germany and Italy agreed to do this, although in the Tripartite Pact Italy and Germany had undertaken to assist Japan only if she were attacked. When the assault on Pearl Harbour did take place, the defendant Ribbentrop is reported to have been "overjoyed", and later, at a ceremony in Berlin when a German medal was awarded to Oshima, the Japan-

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ese Ambassador, Hitler indicated his approval of the tactics which the Japanese had adopted of negotiating with the United States as long as possible, and then striking hard without any declaration of war.

Although it is true that Hitler and his colleagues originally did not consider that a war with the United States would be beneficial to their interest, it is apparent that in the course of 1941 that view was revised, and Japan was given every encouragement to adopt a policy which would almost certainly bring the United States into the war. And when Japan attacked the United States fleet in Pearl Harbour and thus made aggressive war against the United States, the Nazi Government caused Germany to enter that war at once on the side of Japan by declaring war themselves on the United States.

F. Biddle begins.

VIOLATIONS OF INTERNATIONAL TREATIES.

The Charter defines as a crime the planning or waging of war that is a war of aggression or a war in violation of international treaties. The Tribunal has decided that certain of the defendants planned and waged aggressive wars against twelve nations, and were therefore guilty of this series of crimes. This makes it unnecessary to discuss the subject in further detail, or even to consider at any length the extent to which these aggressive wars were also "wars in violation of international treaties, agreements or assurances." These treaties are set out in Appendix C of the Indictment. Those of principal importance are the following.

HAGUE CONVENTIONS.

In the 1899 Convention the signatory powers agreed: "before an appeal to arms ... to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly powers." A similar clause was inserted in the Convention for Pacific Settlement of International Disputes of 1907. In the accompanying Convention Relative to Opening of Hostilities, Article I contains this far more specific language:

> "The Contracting Powers recognise that hostilities between them must not commence without a previous and explicit warning, in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war."

Germany was a party to these conventions.

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VERSAILLES TREATY

Breaches of certain provisions of the Versailles Treaty are also relied on by the Prosecution - not to fortify the left bank of the Rhine (Art. 44-42); to "respect strictly the independence of Austria" (Art. 80); renunciation of any rights in Memel (Art. 99), and the Free City of Danzig (Art. 100); the recognition of the independence of the Czecho-Slovak State; and the Military, Naval and Air Clauses against German rearmament found in Part V. There is no doubt that action was taken by the German Government contrary to all these provisions, the details of which are set out in Appendix C. With regard to the Treaty of Versailles, the matters relied on are:

1. The violation of Articles 42 to 44 in respect of the demilitarised zone of the Rhineland;

2. The annexation of Austria on the 13th March 1938, in violation of Article 80;

3. The incorporation of the district of Memel on the 22nd March 1939, in violation of Article 99;

4. The incorporation of the Free City of Danzig on the 1st September 1939, in violation of Article 100;

5. The incorporation of the provinces of Bohemia and Moravia on the 16th March 1939, in violation of Article 81;

6. The repudiation of the military naval and air clauses of the Treaty, in or about March of 1935.

On the 21st May 1935 Germany announced, that whilst renouncing the disarmament clauses of the Treaty, she would still respect the territorial limitations, and would comply with the Locarno Pact. [With regard to the

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first five breaches alleged, therefore, the Tribunal finds the allegation proved.

TREATIES OF MUTUAL GUARANTEE, ARBITRATION AND NON-AGGRESSION.

It is unnecessary to discuss in any detail the various treaties entered into by Germany with other powers. Treaties of Mutual Guarantee were signed by Germany at Locarno in 1925, with Belgium, France, Great Britain and Italy, assuring the maintenance of the territorial status quo. Arbitration treaties were also executed by Germany at Locarno with Czechoslovakia, Belgium and Poland.

Article I of the latter treaty is typical, providing:

> "All disputes of every kind between Germany and Poland ... which it may not be possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision to an arbitral tribunal ..."

Conventions of Arbitration and Conciliation were entered into between Germany, the Netherlands and Denmark in 1926; and between Germany and Luexemburg in 1929. Non-aggression treaties were executed by Germany with Denmark and Russia in 1939.

KELLOGG-BRIAND PACT.

The Pact of Paris was signed on the 27th August 1928 by Germany, the United States, Belgium, France, Great Britain, Italy, Japan, Poland and other countries; and subsequently by other powers. The Tribunal has made full reference to the nature of this Pact, and its legal effect in another part of this Judgment. It is therefore not necessary to discuss the matter further here, save to state that in the opinion of the Tribunal this Pact was violated by Germany in all the cases of aggressive war charged in the Indictment. It is to be noted that on the 26th January 1934 Germany signed a

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Declaration for the Maintenance of Permanent Peace with Poland, which was explicitly based on the Pact of Paris, and in which the use of force was outlawed for a period of ten years.

The Tribunal does not find it necessary to consider any of the other treaties referred to in the Appendix, or the repeated agreements and assurances of her peaceful intentions entered into by Germany.

Greenhow
Cochran Plan.

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THE LAW OF THE CHARTER

The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive, and binding upon the Tribunal.

The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognised by the civilised world. The Charter is not an arbitrary exercise of power on the part of the victorious nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law.

The Signatory Powers created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the Trial. In doing so, they have done together what any one of them might have done singly; for it is not to be doubted that any nation has the right thus to set up special courts to administer law. With regard to the constitution of the court, all that the defendants are entitled to ask is to receive a fair trial on the facts and law.

The Charter makes the planning or waging of a war of aggression or a war in violation of international treaties a crime; and it is therefore not strictly necessary to consider whether and to what extent aggressive war was a crime before the execution of the London Agreement. But in view of the

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great importance of the questions of law involved, the Tribunal has heard full argument from the Prosecution and the Defence, and will express its view on the matter.

It was urged on behalf of the defendants that a fundamental principle of all law - international and domestic - is that there can be no punishment of crime without a pre-existing law. "Nullum crimen sine lege, nulla poena sine lege." It was submitted that ex post facto punishment is abhorrent to the law of all civilised nations, that no sovereign power had made aggressive war a crime at the time the alleged criminal acts were committed, that no statute had defined aggressive war, that no penalty had been fixed for its commission, and no court had been created to try and punish offenders.

In the first place, it is to be observed that the maxim nullum crimen sine lege is not a limitation of sovereignty, but is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighbouring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished. Occupying the positions they did in the government of Germany, the defendants, or at least some of them must have known of the treaties signed by Germany, outlawing recourse to war for the settlement of international disputes; they must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression. On this view of the case alone, it would appear that the maxim has no application to the present facts.

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This view is strongly reinforced by a consideration of the state of international law in 1939, so far as aggressive war is concerned. The General Treaty for the Renunciation of War of August 27th 1928, more generally known as the Pact of Paris or the Kellogg-Briand Pact, was binding on sixty-three nations, including Germany, Italy and Japan at the outbreak of war in 1939. In the preamble, the signatories declared that they were:-

> "Deeply sensible of their solemn duty to promote the welfare of mankind; persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples should be perpetuated ... all changes in their relations with one another should be sought only by pacific means ... thus uniting civilised nations of the world in a common renunciation of war as an instrument of their national policy ..."

The first two articles are as follows:

> "Article I: The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations to one another."

> "Article II: The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arrive among them, shall never be sought except by pacific means."

The question is, what was the legal effect of this pact? The nations who signed the pact or adhered to it unconditionally condemned recourse to war for the future as an instrument of policy, and expressly renounced it. After the signing of the pact, any nation resorting to war as an instrument of

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national policy breaks the pact. In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact. As Mr. Henry L. Stimson, then Secretary of State of the United States, said in 1932:

> "War between nations was renounced by the signatories of the Kellogg-Briand Treaty. This means that it has become throughout practically the entire world ... an illegal thing. Hereafter, when nations engage in armed conflict, either one or both of them must be termed violators of this general treaty law ... We denounce them as law breakers."

But it is argued that the pact does not expressly enact that such wars are crimes, or set up courts to try those who make such wars. To that extent the same is true with regard to the laws of war contained in the Hague Convention. The Hague Convention of 1907 prohibited resort to certain methods of waging war. These included the inhumane treatment of prisoners, the employment of poisoned weapons, the improper use of flags of truce, and similar matters. Many of these prohibitions had been enforced long before the date of the Convention; but since 1907 they have certainly been crimes, punishable as offences against the laws of war; yet the Hague Convention nowhere designates such practices as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders. For many years past, however, military tribunals have tried and punished individuals guilty of violating the rules of land warfare laid down by this Convention. In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally

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illegal, and of much greater moment than a breach of one of the rules of the Hague Convention. In interpreting the words of the Pact, it must be remembered that international law is not the product of an international legislature, and that such international agreements as the Pact of Paris have to deal with general principles of law, and not with administrative matters of procedure. The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practised by military courts. This law is not static, but by continual adaptation follows the needs of a changing world. Indeed, in many cases treaties do no more than express and define for more accurate reference the principles of law already existing.

The view which the Tribunal takes of the true interpretation of the Pact is supported by the international history which preceded it. In the year 1923 the draft of a Treaty of Mutual Assistance was sponsored by the League of Nations. In Article I the treaty declared "that aggressive war is an international crime", and that the parties would "undertake that no one of them will be guilty of its commission". The draft treaty was submitted to twenty-nine states, about half of whom were in favour of accepting the text. The principal objection appeared to be in the difficulty of defining the acts which would constitute "aggression", rather than any doubt as to the criminality of aggressive war. The preamble to the League of Nations 1924 Protocol for the Pacific Settlement of International Disputes ("Geneva Protocol"), after "recognising the solidarity of the members of the international community", declared that "a war of aggression constitutes a violation of this solidarity and is an international crime." It went on to declare that the contracting parties were "desirous of

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facilitating the complete application of the system provided in the Covenant of the League of Nations for the pacific settlement of disputes between the states and of ensuring the repression of international crimes." The Protocol was recommended to the members of the League of Nations by a unanimous resolution in the Assembly of the forty-eight members of the League. These members included Italy and Japan, but Germany was not then a member of the League.

Although the Protocol was never ratified, it was signed by the leading statesmen of the world, representing the vast majority of the civilised states and peoples, and may be regarded as strong evidence of the intention to brand aggressive war as an international crime.

At the meeting of the Assembly of the League of Nations on the 24th September 1927, all the delegations then present (including the German, the Italian and the Japanese), unanimously adopted a declaration concerning wars of aggression. The preamble to the declaration stated:

> "The Assembly:
> Recognising the solidarity which unites the community of nations;
> Being inspired by a firm desire for the maintenance of general peace;
> Being convinced that a war of aggression can never serve as a means of settling international disputes, and is in consequence an international crime ..."

The unanimous resolution of the 18th February 1928 of twenty-oen American republics at the sixth (Havana) Pan-American Conference, declared that "war of aggression constitutes an international crime against the human species."

All these expressions of opinion, and others that could be cited, so solemnly made, reinforce the construction which the Tribunal placed upon the Pact of Paris, that resort to a war of aggression is not merely illegal, but is criminal. The prohibition of aggressive war demanded by the conscience of the world, finds its expression in the series of Pacts and Treaties to which the Tribunal has just referred.

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It is also important to remember that Article 227 of the Treaty of Versailles provided for the constitution of a special Tribunal, composed of representatives of five of the Allied and Associated Powers which had been belligerents in the first World War opposed to Germany, to try the former German Emperor "for a supreme offence against international morality and the sanctity of treaties." The purpose of this trial was expressed to be "to vindicate the solemn obligations of international undertakings, and the validity of international morality." In Article 228 of the Treaty, the German Government expressly recognised the right of the Allied Powers "to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war."

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It was submitted that international law is concerned with the actions of sovereign states, and provides no punishment for individuals; and further, that where the act in question is an act of state, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon states has long been recognised. In the recent case of Ex Parte Quirin (1942 317 US 1), before the Supreme Court of the United States, persons were charged during the war with landing in the United States for purposes of spying and sabotage. The late Chief Justice Stone, speaking for the Court, said:

> "From the very beginning of its history this Court has applied the law of war as including that part of the law of nations which prescribes for the conduct of war, the status, rights and duties of enemy nations as well as enemy individuals."

He went on to give a list of cases tried by the Courts, where individual offenders were charged with offences against the laws of nations, and particularly the laws of war. Many other authorities could be cited, but enough has been said to show that individuals can be punished for violations of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

The provisions of Article 228 of the Treaty of Versailles already referred to illustrate and enforce this view of individual responsibility.

Chapter 1

The principle of international law, which under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings. Article 7 of the Charter expressly declares:

> "The official position of defendants, whether as heads of state, or responsible officials in government departments, shall not be considered as freeing them from responsibility, or mitigating punishment."

On the other hand the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorising action moves outside its competence under International Law.

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It was also submitted on behalf of most of these defendants that in doing what they did they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by them in carrying out these orders. The Charter specifically provides in Article 8:

> "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment."

The provisions of this article are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognised as a defence to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.

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THE LAW AS TO THE COMMON PLAN OR CONSPIRACY.

In the previous recital of the facts relating to aggressive war, it is clear that planning and preparation had been carried out in the most systematic way at every stage of the history.

Planning and preparation are essential to the making of war. In the opinion of the Tribunal aggressive war is a crime under international law. The Charter defines this offence as planning, preparation, initiation or waging of a war of aggression "or participation in a common plan or conspiracy for the accomplishment ... of the foregoing". The Indictment follows this distinction. Count One charges the common plan or conspiracy. Count Two charges the planning and waging of war. The same evidence has been introduced to support both counts. We shall therefore discuss both counts together, as they are in substance the same. The defendants have been charged under both counts, and their guilt under each count must be determined.

The "common plan or conspiracy" charged in the Indictment covers twenty-five years, from the formation of the Nazi Party in ~~1920~~ 1919 to the end of the war in 1945. The party is spoken of as "the instrument of cohension among the defendants" for carrying out the purposes of the conspiracy - the overthrowing

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of the Treaty of Versailles, acquiring territory lost by Germany in the last war and "lebensraum" in Europe, by the use, if necessary, of armed force, of aggressive war. The "seizure of power" by the Nazis, the use of terror, the destruction of trade unions, the attack on Christian teaching and on churches, the persecution of the Jews, the regimentation of youth - all these are said to be steps deliberately taken to carry out the common plan. It found expression, so it is alleged, in secret rearmament, the withdrawal by Germany from the Disarmament Conference and the League of Nations, universal military service, and seizure of the Rhineland. Finally, according to the Indictment, aggressive action was planned and carried out against Austria and Czechoslovakia in 1936-1938, followed by the planning and waging of war against Poland; and, successively, against ten other countries.

The Prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party programme, such as are found in the twenty-~~one~~ five points of the Nazi Party, announced in 1920, or the political affirmations expressed in "Mein Kampf" in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.

It is not necessary to decide whether a single master conspiracy between the defendants has been established by the evidence. The seizure of power by the Nazi Party, and the subsequent domination by the Nazi State of all spheres

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of economic and social life must of course be remembered when the later plans for waging war are examined. That plans were made to wage wars, as early as November 5th 1937, and probably before that, is apparent. And thereafter, such preparations contined in many directions, and against the peace of many countries. Indeed the threat of war - and war itself if necessary - was an integral part of the Nazi policy. But the evidence establishes with certainty the existence of many separate plans rather than a single conspiracy embracing them all. That Germany was rapidly moving to complete dictatorship from the moment that the Nazis seized power, and progressively in the direction of war, has been overwhelmingly shown in the ordered sequence of aggressive acts and wars already set out in this Judgment.

In the opinion of the Tribunal, the evidence establishes the common planning to prepare and wage war by certain of the defendants. It is immaterial to consider whether a single conspiracy to the extent and over the time set out in the Indictment has been conclusively proved. Continued planning, with aggressive war as the objective, has been established beyond doubt. The truth of the situation was well stated by Paul Schmidt, official interpreter of the German Foreign Office, as follows:

> "The general objectives of the Nazi leadership were apparent from the start, namely the domination of the European Continent, to be achieved first by the incorporation of all German speaking groups in the Reich, and secondly, by territorial expansion under the slogan "Lebensraum". The execution of these basic objectives, however, seemed to be characterised by improvisation. Each succeeding step was apparently carried out as each new situation arose, but all consistent with the ultimate objectives mentioned above."

The argument that such common planning cannot exist where there is complete dictatorship is unsound. A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of

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them; and those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it. Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organised domestic crime.

Count One, however, charges not only the conspiracy to commit aggressive war, but also to commit war crimes and crimes against humanity. But the Charter does not define as a separate crime any conspiracy except the one to commit acts of aggressive war. Article 6 of the Charter provides:

> "Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

In the opinion of the Tribunal these words do not add a new and separate crime to those already listed. The words are designed to establish the responsibility of persons participating in a common plan. The Tribunal will therefore disregard the charges in Count One that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate and wage aggressive war.

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WAR CRIMES AND CRIMES AGAINST HUMANITY

The evidence relating to War Crimes has been overwhelming, in its volume and its detail. It is impossible for this Judgment adequately to review it, or to record the mass of documentary and oral evidence that has been presented. The truth remains that War Crimes were committed on a vast scale, never before seen in the history of War. They were perpetrated in all the countries occupied by Germany, and on the High Seas, and were attended by every conceivable circumstance of cruelty and horror. There can be no doubt that the majority of them arose from the Nazi conception of "total war", with which the aggressive wars were waged. For in this conception of "total war", the moral ideas underlying the Conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances and treaties all alike are of no moment; and so, freed from the restraining influence of international law, the aggressive war is conducted by the Nazi leaders in the most barbaric way. Accordingly, War Crimes were committed when and wherever the Fuehrer and his close associates thought them to be advantageous. They were for the most part the result of cold and criminal calculation.

On some occasions, War Crimes were deliberately planned long in advance. In the case of the Soviet Union, the plunder of the territories to be occupied, and the ill-treatment of the civilian population, were settled in minute detail before the attack was begun. As early as the Autumn of 1940, the invasion of the territories of the Soviet Union was being considered. From that date onwards, the methods to be employed in destroying all possible opposition were continuously under discussion.

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Similarly, when planning to exploit the inhabitants of the occupied countries for slave labour on the very greatest scale, the German Government conceived it as an integral part of the war economy, and planned and organised this particular War Crime down to the last elaborate detail.

Other War Crimes, such as the murder of prisoners of war who had escaped and been recaptured, or the murder of Commandos or captured airmen, or the destruction of the Soviet Commissars, were the result of direct orders circulated through the highest official channels.

The Tribunal proposes therefore to deal quite generally with the question of War Crimes, and to refer to them later when examining the responsibility of the individual defendants in relation to them. Prisoners of war were ill-treated and tortured and murdered, not only in defiance of the well-established rules of international law, but in complete disregard of the elementary dictates of humanity. Civilian populations in occupied territories suffered the same fate. Whole populations were deported to Germany for the purposes of slave labour upon defence works, armament production and similar tasks connected with the war effort. Hostages were taken in very large numbers from the civilian populations in all the occupied countries, and were shot as suited the German purposes. Public and private property was systematically plundered and pillaged in order to enlarge the resources of Germany at the expense of the rest of Europe. Cities and towns and villages were wantonly destroyed without military justification or necessity.

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MURDER AND ILL-TREATMENT OF PRISONERS OF WAR

Article 6(b) of the Charter defines War Crimes in these words:

> "War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity."

In the course of the war many Allied soldiers who had surrendered to the Germans were shot immediately, often as a matter of deliberate, calculated policy. On the 18th October 1942 the defendant Keitel circulated a directive authorised by Hitler, which ordered that all members of Allied "Commando" units, often when in uniform and whether armed or not, were to be "slaughtered to the last man", even if they attempted to surrender. It was further provided that if such Allied troops came into the hands of the military authorities after being first captured by the local police, or in any other way, they should be handed over immediately to the SD. This order was supplemented from time to time, and was effective throughout the remainder of the war, although after the Allied landings in Normandy in 1944 it was made clear that the order did not apply to "Commandos" captured within the immediate battle area. Under the provisions of this order, Allied "Commando" troops, and other military units operating independently, lost their lives in Norway, France, Czechoslovakia and Italy. Many of them were killed on the spot, and in no case were those who were executed later in concentration camps ever given a trial of any kind. For example, an American military mission which landed behind the German front in the Balkans in January 1945, numbering about twelve to fifteen men and wearing

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uniform, were taken to Mauthausen under the authority of this order, and according to the affidavit of Adolf Zutte, the adjutent of the Mauthausen Concentration Camp, all of them were shot.

In March 1944 the OKH issued the "Kugel" or "Bullet" Decree, which directed that every escaped officer and NCO prisoner of war who had not been put to work, with the exception of British and American prisoners of war, should on recapture be handed over to the SIPO and SD. This order was distributed by the SIPO and SD to their regional offices. These escaped officers and NCOs were to be sent to the concentration camp at Mauthausen, to be executed upon arrival, by means of a bullet shot in the neck.

In March 1944 fifty officers of the British Royal Air Force, who escaped from the camp at Sagan where they were confined as prisoners, were shot on recapture, on the direct orders of Hitler. Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp. It was not contended by the defendants that this was other than plain murder, in complete violation of international law.

When Allied airmen were forced to land in Germany, they were sometimes killed at once by the civilian population. The police were instructed not to interfere with these killings, and the Ministry of Justice was informed that no-one should be prosecuted for taking part in them.

The treatment of Soviet prisoners of war was characterised by particular inhumanity. The death of so many of them was not due merely to the action of individual guards, or to the exigencies of life in the camps. It was the result of systematic plans to murder. More than a month before the German invasion of the Soviet Union, the OKW were making special plans for

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dealing with political representatives serving with the Soviet armed forces who might be captured. One proposal was that "political Commissars of the Army are not recognised as Prisoners of War, and are to be liquidated at the latest in the transient prisoner of war camps." The defendant Keitel gave evidence that instructions incorporating this proposal were issued to the German army.

On the 8th September 1941 regulations for the treatment of Soviet prisoners of war in all prisoner of war camps were issued, signed by General Reinecke, the head of the prisoner of war department of the High Command. These orders stated:

> "The Bolshevist soldier has therefore lost all claim to treatment as an honourable opponent, in accordance with the Geneva Convention.... The order for ruthless and energetic action must be given at the slightest indication of insubordination, especially in the case of Bolshevist fanatics. Insubordination, active or passive resistance, must be broken immediately by force of arms (bayonets, butts and firearms)... Anyone carrying out the order who does not use his weapons, or does so with insufficient energy, is punishable... Prisoners of war attempting escape are to be fired on without previous challenge. No warning shot must ever be fired.... The use of arms against prisoners of war is as a rule legal."

The Soviet prisoners of war were left without suitable clothing. The wounded without medical care; they were starved, and in many cases left to die.

On the 17th July 1941, the Gestapo issued an order providing for the killing of all Soviet prisoners of war who were or might be dangerous to National Socialism. The order recited:

> "The mission of the Commanders of the SIPO and SD stationed in Stalags is the political investigation of all camp inmates, the elimination and further 'treatment' (a) of all political, criminal or in some other way unbearable elements among them, (b) of those persons who could be used for the reconstruction of the occupied territories.... Further,

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> the commanders must make efforts from the beginning to seek out among the prisoners elements which appear reliable, regardless if there are Communists concerned or not, in order to use them for Intelligence purposes inside of the camp, and if advisable, later in the occupied territories also. By use of such informers, and by use of all other existing possibilities, the discovery of all elements to be eliminated among the prisoners must proceed step by step at once...
>
> Above all, the following must be discovered: all important functionaries of State and Party, especially professional revolutionaries... all People's Commissars in the Red Army, leading personalities of the State... leading personalities of the business world, members of the Soviet Russian Intelligence, all Jews, all persons who are found to be agitators or fanatical Communists. Executions are not to be held in the camp or in the immediate vicinity of the camp....The prisoners are to be taken for special treatment if possible into the former Soviet Russian territory."

The affidavits of Warlimont, deputy Chief of Staff of the Wehrmacht, of Ohlendorf, former Chief of Amt III of the RSHA, and of Lahousen, the head of one of the sections of the Abwehr, the Wehrmacht's Intelligence Service, all indicate the thoroughness with which this order was carried out.

The affidavit of Kurt Lindow, a former Gestapo official, states:

> "... There existed in the prisoner of war camps on the Eastern Front small screening teams (Einsatz commandos), headed by lower ranking members of the Secret Police (Gestapo). These teams were assigned to the camp commanders and had the job to segregate the prisoners of war who were candidates for execution according to the orders that had been given, and to report them to the office of the Secret Police."

On the 23rd October 1941 the camp commander of the Gross Rosen concentration camp reported to Mueller, chief of the Gestapo, a list of the Soviet prisoners of war who had been executed there on the previous day.

An account of the general conditions and treatment of Soviet prisoners of war during the first eight months after the German attack upon Russia was

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given in a letter which the defendant Rosenberg sent to the defendant Keitel on the 28th February 1942:

> "The fate of the Soviet prisoners of war in Germany is on the contrary a tragedy of the greatest extent ... A large part of them has starved, or died because of the hazards of the weather. Thousands also died from spotted fever.
>
> The camp commanders have forbidden the civilian population to put food at the disposal of the prisoners, and they have rather let them starve to death.
>
> In many cases, when prisoners of war could no longer keep up on the march because of hunger and exhaustion, they were shot before the eyes of the horrified population, and the corpses were left.
>
> In numerous camps, no shelter for the prisoners of war was provided at all. They lay under the open sky during rain or snow. Even tools were not made available to dig holes or caves."

In some cases Soviet prisoners of war were branded with a special permanent mark. There was put in evidence the OKW order dated the 20th July 1942 which laid down that:

> "The brand is to take the shape of an acute angle of about 45 degrees, with the long side to be 1 cm. in length, pointing upwards and burnt on the left buttock ... This brand is made with the aid of a lancet available in any military unit. The colouring used is Chinese ink."

The carrying out of this order was the responsibility of the military authorities, though it was widely circulated by the Chief of the SIPO and the SD to German police officials for information.

Soviet prisoners of war were also made the subject of medical experiments of the most cruel and inhuman kind. In July 1943 experimental work was begun in preparation for a campaign of bacteriological warfare; Soviet prisoners of war were used in these medical experiments, which more often than not proved fatal. In connection with this campaign for bacteriological warfare, preparations were also made for the spreading of bacterial emulsions

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from planes, with the object of producing widespread failures of crops and consequent starvation. These measures were never applied, possibly because of the rapid deterioration of Germany's military position.

The argument in defence of the charge with regard to the murder and ill-treatment of Soviet prisoners of war, that the USSR was not a party to the Geneva Convention, is quite without foundation. On the 15th September 1941 Admiral Canaris protested against the regulations for the treatment of Soviet prisoners of war, signed by General Reinecke on the 8th September 1941. He then stated:

> "The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the USSR. Therefore only the principles of general international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people ... The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different view-point."

This protest, which correctly stated the legal position, was ignored. The defendant Keitel made a note on this memorandum:

> "The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures."

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MURDER AND ILL-TREATMENT OF CIVILIAN POPULATION

Article 6(b) of the Charter provides that "ill-treatment ... of civilian population of or in occupied territory ... killing of hostages ... wanton destruction of cities, towns or villages" shall be a war crime. In the main, these provisions are merely declaratory of the existing laws of war as expressed by the Hague Convention, Article 46, which stated:

> "Family honour and rights, the lives of persons and private property, as well as religious convictions and practice, must be respected."

The territories occupied by Germany were administered in violation of the laws of war. The evidence is quite overwhelming of a systematic rule of violence, brutality and terror. On the 7th ~~September~~ DECEMBER 1941 Hitler issued the directive since known as the "Nacht und Nebel Erlass" (Night and Fog Decree), under which persons who committed offences against the Reich or the German forces in occupied territories, except where the death sentence was certain, were to be taken secretly to Germany and handed over to the SIPO and SD for trial or punishment in Germany. This decree was signed by the defendant Keitel. After these civilians arrived in Germany, no word of them was permitted to reach the country from which they came, or their relatives; even in cases when they died awaiting trial the families were not informed, the purpose being to create anxiety in the minds of the family of the arrested person. Hitler's purpose in issuing this decree was stated by the defendant Keitel in a covering letter, dated 12th December 1941, to be as follows:

> "Efficient and enduring intimation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the

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criminal. This aim is achieved when the criminal is transferred to Germany."

Even persons who were only suspected of opposing any of the policies of the German occupation authorities were arrested, and on arrest were interrogated by the Gestapo and the SD in the most shameful manner. On the 12th June 1942 the Chief of the SIPO and SD published, through Mueller, the Gestapo Chief, an order authorising the use of "third degree" methods of interrogation, where preliminary investigation had indicated that the person could give information on important matters, such as subversive activities, though not for the purpose of extorting confessions of the prisoner's own crimes. This order provided:

> "... Third degree may, under this supposition, only be employed against Communists, Marxists, Jehovah's Witnesses, saboteurs, terrorists, members of resistance movements, parachute agents, anti-social elements, Polish or Soviet Russian loafers or tramps; in all other cases my permission must first be obtained ... Third degree can, according to circumstances, consist amongst other methods of very simple diet (bread and water), hard bunk, dark cell, deprivation of sleep, exhaustive drilling, also in flogging (for more than twenty strokes a doctor must be consulted)."

The brutal suppression of all opposition to the German occupation was not confined to severe measures against suspected members of resistance movements themselves, but was also extended to their families. On the 19th July 1944, the Commander of the SIPO and SD in the district of Radom, in Poland, published an order, transmitted through the Higher SS and Police Leaders, to the effect that in all cases of assassination or attempted assassination of Germans, or where saboteurs had destroyed vital installations, not only the guilty person, but also all his or her male relatives should be shot, and female relatives over sixteen years of age put into a concentration camp.

In the summer of 1944 the Einsatz Commando of the SIPO and SD at

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Lusemburg caused persons to be confined at Sachsenhausen concentration camp because they were relatives of deserters, and were therefore "expected to endanger the interest of the German Reich if allowed to go free."

The practice of keeping hostages to prevent and to punish any form of civil disorder was resorted to by the Germans; an order issued by the defendant Keitel on the 16th September 1941 spoke in terms of fifty or a hundred lives from the occupied areas of the Soviet Union for one German life taken. The order stated that "it should be remembered that a human life in unsettled countries frequently counts for nothing, and a deterrent effect can be obtained only by unusual severity." The exact number of persons killed as a result of this policy is not known, but large numbers were killed in France and the other occupied territories in the West, while in the East the slaughter was on an even more extensive scale. In addition to the killing of hostages, entire towns were destroyed in some cases; such massacres as those of Oradour-sur-Glane in France and Lidice in Czechoslovakia, both of which were described to the Tribunal in detail, are examples of the organised use of terror by the occcupying forces to beat down and destroy all opposition to their rule.

One of the most notorious means of terrorising the people in occupied territories was the use of concentration camps. They were first established in Germany at the moment of the seizure of power by the Nazi Government. Their original purpose was to imprison without trial all those persons who were opposed to the Government, or who were in any way obnoxious to German authority. With the aid of a secret police force, this practice was widely extended, and in course of time concentration camps became places of organised

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and systematic murder, where millions of people were destroyed.

In the administration of the occupied territories the concentration camps were used to destroy all opposition groups. The persons arrested by the Gestapo were as a rule sent to concentration camps. They were conveyed to the camps in many cases without any care whatever being taken for them, and great numbers died on the way. Those who arrived at the camp were subject to systematic cruelty. They were given hard physical labour, inadequate food, clothes and shelter, and were subject at all times to the rigours of a soulless regime, and the private whims of individual guards. In the report of the War Crimes Branch of the Judge Advocate's Section of the 3rd U.S. Army, under date 21st June 1945, the conditions at the Flossenburg concentration camp were investigated, and one passage may be quoted:

> "Flossenburg concentration camp can best be described as a factory dealing in death. Although this camp had in view the primary object of putting to work the mass slave labour, another of its primary objects was the elimination of human lives by the methods employed in handling the prisoners. Hunger and starvation rations, sadism, inadequate clothing, medical neglect, disease, beatings, hangings, freezing, forced suicides, shooting etc. all played a major role in obtaining their object. Prisoners were murdered at random; spite killings against Jews were common, injections of poison and shooting in the neck were everyday occurrences; epidemics of typhus and spotted fever were permitted to run rampant as a means of eliminating prisoners; life in this camp meant nothing. Killing became a common thing, so common that a quick death was welcomed by the unfortunate ones."

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A certain number of the concentration camps were equipped with gas chambers for the wholesale destruction of the inmates, and with furnaces for the burning of the bodies. Some of them were in fact used for the extermination of Jews as part of the "final solution" of the Jewish problem. Most of the non-Jewish inmates were used for labour, although the conditions under which they worked made labour and death almost synonymous terms. Those inmates who became ill and were unable to work were either destroyed in the gas chambers or sent to special infirmaries, where they were given entirely inadequate medical treatment, worse food if possible than the working inmates, and left to die.

The murder and ill-treatment of civilian populations reached its height in the treatment of the citizens of the Soviet Union and Poland. Some four weeks before the invasion of Russia began, special task forces of the SIPO and SD, called Einsatz Groups, were formed on the orders of Himmler for the purpose of following the German armies into Russia, combating partisans and members of Resistance Groups, and exterminating the Jews and communist leaders, and other sections of the population. In the beginning, four such Einsatz Groups were formed, one operating in the Baltic States, one towards Moscow, one towards Kiev, and one operating in the south of Russia. Ohlendorf, former chief of Amt III of the RSHA, who led the fourth group, stated in his affidavit:

> "When the German army invaded Russia, I was leader of Einsatzgruppe D, in the southern sector, and in the course of the year during which I was leader of the Einsatzgruppe D it liquidated approximately 90,000 men women and children. The majority of those liquidated were Jews, but there were also among them some communist functionaries."

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In an order issued by the defendant Keitel on the 23rd July 1941, and drafted by the defendant Jodl, it was stated that

> "in view of the vast size of the occupied areas in the East, the forces available for establishing security in these areas will be sufficient only if all resistance is punished, not by legal prosecution of the guilty, but by the spreading of such terror by the armed forces as is appropriate to eradicate every inclination to resist among the population... Commanders must find the means of keeping order by applying suitable draconian measures."

The evidence has shown that this order was ruthlessly carried out in the territory of the Soviet Union and in Poland. A significant illustration of the measures actually applied occurs in the document which was sent in 1943 to the defendant Rosenberg by the Reich Commissar for Eastern Territories, who wrote:

> "It should be possible to avoid atrocities and to bury those who have been liquidated. To lock men, women and children into barns and set fire to them does not appear to be a suitable method of combating bands, even if it is desired to exterminate the population. This method is not worthy of the German cause, and hurts our reputation severely."

The Tribunal had before it an affidavit of one Hermann Graebe, dated 10th November 1945, describing the immense mass murders which he witnessed. He was the manager and engineer in charge of the branch of the Solingen firm of Josef Jung in Sdolbunow, Ukraine, from September 1941 to January 1944. He first of all described the attack upon the Jewish ghetto at Rowno:

> "...Then the electric floodlights which had been erected all round the ghetto were switched on. SS and militia details of four to six members

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entered or at least tried to enter the houses. Where the doors and windows were closed, and the inhabitants did not open upon the knocking, the SS men and militia broke the windows, forced the doors with beams and crowbars, and entered the dwelling. The owners were driven on to the street just as they were, regardless of whether they were dressed or whether they had been in bed. ... Car after car was filled. Over it hung the screaming of women and children, the cracking of whips and rifle shots."

Graebe then described how a mass execution at Dubno, which he witnessed on the 5th October 1942, was carried out:

"...Now we heard shots in quick succession from behind one of the earth mounds. The people who had got off the trucks, men, women and children of all ages, had to undress upon the orders of an SS man, who carried a riding or dog whip... Without screaming or crying, these people undressed, stood around by families, kissed each other, said farewells, and waited for the command of another SS man, who stood near the excavation, also with a whip in his hand... At that moment the SS man at the excavation called something to his comrade. The latter counted off about 20 persons, and instructed them to walk behind the earth mound... I walked around the mound and stood in front of a tremendous grave; closely pressed together, the people were lying on top of each other so that only their heads were visible. The excavation was already two-thirds full; I estimated that it contained about a thousand people... Now already the next group approached, descended into the excavation, lined themselves up against the previous victims and were shot."

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The foregoing crimes against the civilian population are sufficiently appalling, and yet the evidence shows that at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonisation by Germans. Hitler had written in "Mein Kampf" on these lines, and the plan was clearly stated by Himmler in July 1942, when he wrote:

> "It is not our task to Germanise the East in the old sense, that is to teach the people there the German language and the German law, but to see to it that only people of purely Germanic blood live in the East."

In August 1942 the policy for the Eastern Territories as laid down by Bormann was summarised by a subordinate of Rosenberg as follows:

> "The Slavs are to work for us. In so far as we do not need them, they may die. Therefore, compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undesirable."

It was Himmler again who stated in October 1943:

> "What happens to a Russian, a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we will take. If necessary, by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur, otherwise it is of no interest to me."

In Poland the intelligentsia had been marked down for extermination as early as September 1939, and in May 1940 the defendant Frank wrote in his diary of "taking advantage of the focussing of world interest on the Western

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Front, by wholesale liquidation of thousands of Poles, first leading representatives of the Polish intelligentsia". Earlier, Frank had been directed to reduce the "entire Polish economy to absolute minimum necessary for bare existence. The Poles shall be the slaves of the Greater German World Empire." In January 1940 he recorded in his diary that "cheap labour must be removed from the General Government by hundreds of thousands. This will hamper the native biological propagation." So successfully did the Germans carry out this policy in Poland that by the end of the war one third of the population had been killed, and the whole of the country devastated.

It was the same story in the occupied area of the Soviet Union. At the time of the launching of the German attack in June 1941 Rosenberg told his collaborators:

> "The object of feeding the German people stands this year without a doubt at the top of the list of Germany's claims on the East, and there the southern territories and the northern Caucasus will have to serve as a balance for the feeding of the German people... A very extensive evacuation will be necessary, without any doubt, and it is sure that the future will hold very hard years in store for the Russians."

Three or four weeks later Hitler discussed with Rosenberg, Goering, Keitel and others his plan for the exploitation of the Soviet population and territory, which included among other things the evacuation of the inhabitants of the Crimea and its settlement by Germans.

A somewhat similar fate was planned for Czechoslovakia by the defendant von Neurath, in August 1940; the intelligentsia were to be "expelled", but the rest of the population was to be Germanised rather than expelled or exterminated, since there was a shortage of Germans to replace them.

In the West the population of Alsace were the victims of a German

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"expulsion action". Between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them. A captured German report dated 7th August 1942 with regard to Alsace states that:

> "The problem of race will be given first consideration, and this in such a manner that persons of racial value will be deported to Germany proper, and racially inferior persons to France."

Gerome Nikitchenko legal

PILLAGE OF PUBLIC AND PRIVATE PROPERTY.

Article 49 of the Hague Convention provides that an occupying power may levy a contribution of money from the occupied territory to pay for the needs of the army of occupation, and for the administration of the territory in question. Article 52 of the Hague Convention provides that an occupying power may make requisitions in kind only for the needs of the army of occupation, and that these requisitions shall be in proportion to the resources of the country. These articles, together with Article 48, dealing with the expenditure of money collected in taxes, and Articles 53, 55 and 56, dealing with public property, make it clear that under the rules of war, the economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear. Article 56 reads as follows:-

> "The property of municipalities, of religious, charitable, educational, artistic and scientific institutions, although belonging to the State, is to be accorded the same standing as private property. All pre-meditated seizure, destruction or damage of such institutions, historical monuments, works of Art and Science, is prohibited and should be prosecuted."

The evidence in this case has established, however, that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic "plunder of public or private property", which was criminal under Article 6(b) of the Charter. The German occupation policy was

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clearly stated in a speech made by the defendant Goering on the 6th August 1942, to the various German authorities in charge of occupied territories:

> "God knows, you are not sent out there to work for the welfare of the people in your charge, but to get the utmost out of them, so that the German people can live. That is what I expect of your exertions. This everlasting concern about foreign people must cease now, once and for all. I have here before me reports on what you are expected to deliver. It is nothing at all, when I consider your territories. It makes no difference to me in this connection if you say that your people will starve."

The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and the West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry. So early as the 19th October 1939 the defendant Goering had issued a directive giving detailed instructions for the administration of the occupied territories; it provided:

> "The task for the economic treatment of the various administrative regions is different, depending on whether the country is involved which will be incorporated politically into the German Reich, or whether we will deal with the Government-General, which in all probability will not be made a part of Germany. In the first mentioned territories, the ... safeguarding of all their productive facilities and

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> supplies must be aimed at, as well as a complete incorporation into the Greater German economic system, at the earliest possible time. On the other hand, there must be removed from the territories of the Government-General all raw materials, scrap materials, machines etc. which are of use for the German war economy. Enterprises which are not absolutely necessary for the meagre maintenance of the naked existence of the population must be transferred to Germany, unless such transfer would require an unreasonably long period of time, and would make it more practicable to exploit those enterprises by giving them German orders, to be executed at their present location."

As a consequence of this order, agricultural products, raw materials needed by German factories, machine tools, transportation equipment, other finished products and even foreign securities and holdings of foreign exchange were all requisitioned and sent to Germany. These resources were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attemps at suppression failed, a German purchasing agency was organised to make purchases for Germany on the black market, thus carrying out the assurance made by the defendant Goering that it was "necessary that all should know that if there is to be famine anywhere, it ~~should~~ SHALL in no case be in Germany."

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In many of the occupied countries of the East and the West, the authorities maintained the pretence of paying for all the property which they seized. This elaborate pretence of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a "clearing account" which was an account merely in name.

In most of the occupied countries of the East even this pretence of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centred on agricultural products and very large amounts of food were shipped from the Government General to Germany.

The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and the severity with which the policy of exploitation was carried out.

The occupation of the territories of the USSR was characterised by pre-meditated and systematic looting. Before the attack on the USSR, an economic staff - Oldenburg - was organised to ensure the most efficient exploitation of Soviet territories. The German armies were to be fed out of Soviet territory, even if "many millions of people will be starved to death." An OKW directive issued before the attack said:

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"To obtain the greatest possible quantity of food and crude oil for Germany - that is the main economic purpose of the campaign."

Similarly, a declaration by the defendant Rosenberg of the 20th June 1941 had advocated the use of the produce from Southern Russia and of the Northern ~~Ukraine~~ CAUCASUS to feed the German people, saying:

"We see absolutely no reason for any obligation on our part to feed also the Russian people with the products of that surplus territory. We know that this is a harsh necessity, bare of any feelings."

When the Soviet territory was occupied, this policy was put into effect; there was a large scale confiscation of agricultural supplies, with complete disregard of the needs of the inhabitants of the occupied territory.

In addition to the seizure of raw materials and manufactured articles, a wholesale seizure was made of art treasures, furniture, textiles and similar articles in all the invaded countries. ~~On the 30th June 1940 the defendant Keitel issued an order in which he said:~~

"The Fuehrer has given the order ~~for seizing~~, along with art ~~objects~~, objects of historical value in the possession of the French State, and also private people, especially Jews ..."

The defendant Rosenberg was designated by Hitler on the 29th January 1940 Head of the Centre for National Socialist Ideological and Educational Research, and thereafter the organisation known as the "Einsatzstab Rosenberg" conducted its operations on a very great scale. Originally designed for the establishment of a research library, it developed into a project for the seizure of cultural treasures. On the 1st March 1942,

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Hitler issued a further decree, authorising Rosenberg to search libraries, lodges and cultural establishments, to seize material from these establishments, as well as cultural treasures owned by Jews. Similar directions were given where the ownership could not be clearly established. The decree directed the co-operation of the Wehrmacht High Command, and indicated that Rosenberg's activities in the West were to be conducted in his capacity as Reichsleiter, and in the East in his capacity as Reichsminister. Thereafter, Rosenberg's activities were extended to the occupied countries. The report of Robert Scholz, Chief of the special staff for Pictorial Art, stated:

> "During the period from March 1941 to July 1944 the special staff for Pictorial Art brought into the Reich 29 large shipments, including 137 freight cars with 4,174 cases of art works."

The report of Scholz refers to 25 portfolios of pictures of the most valuable works of the art collection seized in the West, which portfolios were presented to the Fuehrer. Thirty-nine volumes, prepared by the Einsatzstab, contained photographs of paintings, textiles, furniture, candelabra and numerous other objects of art, and illustrated the value and magnitude of the collection which had been made. In many of the occupied countries private collections were robbed, libraries were plundered, and private houses were pillaged.

Museums, palaces and libraries in the occupied territories of the USSR were systematically looted. Rosenberg's Einsatzstab, Ribbentrop's special "Battalion", the Reichscommissars and representatives of the Military Command seized objects of cultural and historical value belonging to the people of the Soviet Union, which were sent to Germany.

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Thus, the Reichscommissar of the Ukraine removed paintings and objects of art from Kiev and Kharkov and sent them to East Prussia. Rare volumes and objects of art from the palaces of Peterhof, Tsarskoye Selo, and Pavlovsk were shipped to Germany. In his letter to Rosenberg of the 3rd October 1941 Reichscommissar Kube stated that the value of the objects of art taken from Byelorussia ran into millions of roubles. The scale of this plundering can also be seen in the letter sent from Rosenberg's department to von Milde-Schreden in which it is stated that during the month of October 1943 alone, about 40 box-cars loaded with objects of cultural value were transported to the Reich.

With regard to the suggestion that the purpose of the seizure of art treasures was protective and meant for their preservation, it is necessary to say a few words. On the 1st December 1939 Himmler, as the Reich Commissioner for the "strengthening of Germanism", issued a decree to the regional officers of the secret police in the annexed eastern territories, and to the commanders of the security service in Radom, Warsaw and Lublin. This decree contained administrative directions for carrying out the art seizure programme, and in Clause 1 it is stated:

> "To strengthen Germanism in the defence of the Reich, all articles mentioned in Section 2 of this decree are hereby confiscated ... They are confiscated for the benefit of the German Reich, and are at the disposal of the Reich Commissioner for the strengthening of Germanism."

The intention to enrich Germany by the seizures, rather than to protect the seized objects, is indicated in an undated report by Dr. Hans Posse, director of the Dresden State Picture Gallery:

> "I was able to gain some knowledge on the public and private collections, as well as clerical property, in Cracow and Warsaw. It is true that we cannot hope too much to enrich ourselves from

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> the acquisition of great art works of paintings and sculptures, with the exception of the Veit-Stoss altar, and the plates of Hans von Kulnbach in the Church of Maria in Cracow ... and several other works from the national museum in Warsaw."

SLAVE LABOUR POLICY

Article 6 (b) of the Charter provides that the "ill-treatment or deportation to slave labour or for any other purpose, of civilian population of or in occupied territory" shall be a War Crime. The laws relating to forced labour by the inhabitants of occupied territories are found in Article 52 of the Hague Convention, which provides:

> "Requisition in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."

The policy of the German occupation authorities was in flagrant violation of the terms of this convention. Some idea of this policy may be GATHERED ~~gahtered~~ FROM ~~by~~ the statement made by Hitler in a speech on November 9th, 1941:

> "The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us includes now more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work."

The actual results achieved were not so complete as this, but the German occupation authorities did succeed in forcing many of the inhabitants of

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the occupied territories to work for the German war effort, and in deporting at least 5,000,000 persons to Germany to serve German industry and agriculture.

In the early stages of the war, manpower in the occupied territories was under the control of various occupation authorities, and the procedure varied from country to country. In all the occupied territories compulsory labour service was promptly instituted. Inhabitants of the occupied countries were conscripted and compelled to work in local occupations, to assist the German war economy. In many cases they were forced to work on German fortifications, and military installations. As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting labourers to Germany was put into force. By the middle of April 1940 compulsory deportation of labourers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler ~~in April 1942~~. In an address to SS officers he recalled how in weather 40 degrees below zero they had to "haul away thousands, tens of thousands, hundreds of thousands." On a later occasion Himmler stated:

> "Whether ten thousand Russian females fall down from exhaustion while digging an anti-tank ditch interests me only in so far as the anti-tank ditch for Germany is finished... We must realise that we have 6-7 million foreigners in Germany... They are none of them dangerous so long as we take severe measures at the merest trifles."

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During the first two years of the German occupation of France, Belgium, Holland and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on the 1st March 1944. The representative of the defendant Speer, one Koehrl, speaking of the situation in France, said:

> "During all this time a great number of Frenchmen were recruited, and voluntarily went to Germany."

He was interrupted by the defendant Sauckel:

> "Not only voluntary, some were recruited forcibly."

To which Koehrl replied:

> "The calling up started after the recruitment no longer yielded enough results."

To which the defendant Sauckel replied:

> "Out of the five million workers who arrived in Germany, not even 200,000 came voluntarily,"

and Koehrl rejoined:

> "Let us forget for the moment whether or not some slight pressure was used. Formally, at least, they were volunteers."

Committees were set up to encourage recruiting, and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign included, for example, the promise that a prisoner of war would be returned for every labourer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of labourers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and

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their families were threatened with reprisals by the police if they refused to go to Germany. It was on the ~~12th~~ 21st March 1942 that the defendant Sauckel was appointed Plenipotentiary-General for the Utilisation of Labour, with authority over "all available manpower, including that of workers recruited abroad, and of prisoners of war."

The defendant Sauckel was directly under the defendant Goering as Commissioner of the Four Year Plan, and a Goering decree of the 27th March 1942 transferred all his authority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labour should be recruited on a voluntary basis, but also provided that "where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to." Rules requiring labour service in Germany were published in all the occupied territories. The number of labourers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary. That conscription was the rule rather than the exception is shown by the statement of Sauckel already quoted, on the 1st March 1944.

The defendant Sauckel frequently asserted that the workers belonging to foreign nations were treated humanely, and that the conditions in which they lived were good. But whatever the intention of Sauckel may have been, and however much he may have desired that foreign labourers should be treated humanely, the evidence before the Tribunal establishes the fact that the conscription of labour was

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accomplished in many cases by drastic and violent methods. The "mistakes and blunders" were on a very great scale. Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses. Houses were sometimes burnt down, and the families taken as hostages, practices which were described by the defendant Rosenberg as having their origin "in the blackest periods of the slave trade." The methods used in obtaining forced labour from the Ukraine appear from an order issued to SD officers there which stated:

> "It will not be possible always to refrain from using force... When searching villages, especially when it has been necessary to burn down a village, the whole population will be put at the disposal of the Commissioner by force... As a rule no more children will be shot... If we limit harsh measures through the above orders for the time being it is only done for the following reason... The most important thing is the recruitment of workers."

The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment of the labourers was governed by Sauckel's instructions of the 20th April 1942 that:

> "All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure."

The evidence showed that workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing or sanitary facilities. The evidence further showed that the treatment of the labourers in Germany in many cases was brutal and degrading. The evidence relating to the Krupp Works at Essen showed that punishments of the most cruel kind were inflicted on the workers. Theoretically at least the workers were paid, housed and fed by the DAF, and even permitted to transfer their savings and to send mail and parcels

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back to their native country; but restrictive regulations took a proportion of the pay; the camps in which they were housed were insanitary; and the food was very often less than the minimum necessary to give the workers strength to do their jobs. In the case of Poles employed on farms in Germany, the employers were given authority to inflict corporal punishment and were ordered, if possible, to house them in stables, not in their own homes. They were subject to constant supervision by the Gestapo and the SS, and if they attempted to leave their jobs they were sent to correction camps or concentration camps. The concentration camps were also used to increase the supply of labour. Concentration camp commanders were ordered to work their prisoners to the limits of their physical power. During the latter stages of the war the concentration camps were so productive in certain types of work that the Gestapo was actually instructed to arrest certain classes of labourers so that they could be used in this way. Allied prisoners of war were also regarded as a possible source of labour. Pressure was exercised on non-commissioned officers to force them to consent to work, by transferring to disciplinary camps those who did not consent. Many of the prisoners of war were assigned to work directly related to military operations, in violation of Article 31 of the Geneva Convention. They were put to work in munition factories and even made to load bombers, to carry ammunition and to dig trenches, often under the most hazardous conditions. This applied particularly to the Soviet prisoners of war. On the 16th February 1943, at a meeting of the Central Planning Board, at which the defendants Sauckel and Speer were present, Milch said:

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> "We have made a request for an order that a certain percentage of men in the Ack-Ack artillery must be Russians; 50,000 will be taken altogether. 30,000 are already employed as gunners. This is an amusing thing, that Russians must work the guns."

And on the 4th October 1943, at Posen, Himmler, speaking of the Russian prisoners, captured in the early days of the war, said:

> "At that time we did not value the mass of humanity as we value it today, as raw material, as labour. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labour, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger."

The general policy underlying the mobilisation of slave labour was stated by Sauckel on the 20th April 1942. He said:

> "The aim of this new gigantic labour mobilisation is to use all the rich and tremendous sources conquered and secured for us by our fighting armed forces under the leadership of Adolf Hitler, for the armament of the armed forces, and also for the nutrition of the Homeland. The raw materials, as well as the fertility of the conquered territories and their human labour power, are to be used completely and conscientiously to the profit of Germany and her Allies ... All prisoners of war from the territories of the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries ... Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labour on a voluntary basis, we must immediately institute conscription or forced labour ... The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilisation of the labour programme in this war."

Reference should also be made to the policy which was in existence in Germany by the summer of 1940, under which all aged, insane and

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incurable people, "useless eaters", were transferred to special institutions where they were killed, and their relatives informed that they had died from natural causes. The victims were not confined to German citizens, but included foreign labourers, who were no longer able to work, and were therefore useless to the German war machine. It has been estimated that at least some 275,000 people were killed in this manner in nursing homes, hospitals and asylums, which were under the jurisdiction of the defendant Frick, in his capacity as Minister of the Interior. How many foreign workers were included in this total it has been quite impossible to determine.

PERSECUTION OF THE JEWS

The persecution of the Jews at the hands of the Nazi Government has been proved in the greatest detail before the Tribunal. It is a record of consistent and systematic inhumanity on the greatest scale. Ohlendorf, chief of Amt III in the RSHA from 1939 to 1943, and who was in command of one of the Einsatz groups in the campaign against the Soviet Union testified as to the methods employed in the extermination of the Jews. He said that he employed firing squads to shoot the victims in order to lessen the sense of individual guilt on the part of his men: and the 90,000 men, women and children who were murdered in one year by his particular group were mostly Jews.

When the witness Bach Zelewski was asked how Ohlendorf could admit the murder of 90,000 people, he replied:

> "I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable."

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But the defendant Frank spoke the final words of this chapter of Nazi history when he testified in this court:

> "We have fought against Jewry: we have fought against it for years: and we have allowed ourselves to make utterances and my own diary has become a witness against me in this connection - utterances which are terrible ... A thousand years will pass and this guilt of Germany will still not be erased."

The anti-Jewish policy was formulated in Point 4 of the Party Programme which declared "Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race." Other points of the programme declared that Jews should be treated as foreigners, that they should not be permitted to hold public office, that they should be expelled from the Reich if it were impossible to nourish the entire population of the State, that they should be denied any further immigration into Germany, and that they should be prohibited from publishing German newspapers. The Nazi Party preached these doctrines throughout its history. "Der Sturmer" and other publications were allowed to disseminate hatred of the Jews, and in the speeches and public declarations of the Nazi leaders, the Jews were held up to public ridicule and contempt.

With the seizure of power, the persecution of the Jews was intensified. A series of discriminatory laws were passed, which limited the offices and professions permitted to Jews; and restrictions were placed on their family life and their rights of citizenship. By the autumn of 1938, the Nazi policy towards the Jews had reached the

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stage where it was directed towards the complete exclusion of Jews from German life. Pogroms were organised, which included the burning and demolishing of synagogues, the looting of Jewish businesses, and the arrest of prominent Jewish business men. A collective fine of one billion marks was imposed on the Jews, the seizure of Jewish assets was authorised, and the movement of Jews was restricted by regulations to certain specified districts and hours. The creation of ghettoes was carried out on an extensive scale, and by an order of the Security Police Jews were compelled to wear a yellow star to be worn on the breast and back.

It was contended for the Prosecution that certain aspects of this anti-Semitic policy were connected with the plans for aggressive war. The violent measures taken against the Jews in November 1938 were nominally in retaliation for the killing of an official of the German Embassy in Paris. But the decision to seize Austria and Czechoslovakia had been made a year before. The imposition of a fine of one billion marks was made, and the confiscation of the financial holdings of the Jews was decreed, at a time when German armament expenditure had put the German treasury in difficulties, and when the reduction of expenditure on armaments was being considered. These steps were taken, moreover, with the approval of the defendant Goering, who had been given responsibility for economic matters of this kind, and who was the strongest advocate of an extensive rearmament programme notwithstanding the financial difficulties.

It was further said that the connection of the anti-Semitic policy with aggressive war was not limited to economic matters. The German Foreign Office circular, in an article of January 25th 1939, entitled "Jewish question as a factor in German Foreign Policy in the year 1938"

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described the new phase in the Nazi anti-Semitic policy in these words:

> "It is certainly no coincidence that the fateful year 1938 has brought nearer the solution of the Jewish question simultaneously with the realisation of the idea of Greater Germany, since the Jewish policy was both the basis and consequence of the events of the year 1938. The advance made by Jewish influence and the destructive Jewish spirit in politics, economy, and culture, paralysed the power and the will of the German people to rise again, more perhaps even than the power policy opposition of the former enemy Allied powers of the World War. The healing of this sickness among the people was therefore certainly one of the most important requirements for exerting the force which, in the year 1938, resulted in the joining together of Greater Germany in defiance of the world."

The Nazi persecution of Jews in Germany before the war, severe and repressive as it was, cannot compare, however, with the policy pursued during the war in the occupied territories. Originally the policy was similar to that which had been in force inside Germany. Jews were required to register, were forced to live in ghettoes, to wear the yellow star, and were used as slave labourers. In the summer of 1941, however, plans were made for the "final solution" of the Jewish question in Europe. This "final solution" meant the extermination of the Jews, which early in 1939 Hitler had threatened would be one of the consequences of an outbreak of war, and a special section in the Gestapo under Adolf Eichmann, as head of Section B 4 of the Gestapo, was formed to carry out the policy.

The plan for exterminating the Jews was developed shortly after the attack on the Soviet Union. Einsatzgruppen of the Security Police and SD, formed for the purpose of breaking the resistance from the population of the

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areas lying behind the German armies in the East, were given the duty of exterminating the Jews in those areas. The effectiveness of the work of the Einsatzgruppen is shown by the fact that in February 1942 Heydrich was able to report that Esthonia had already been cleared of Jews and that in Riga the number of Jews had been reduced from 29,500 to 2,500. Altogether the Einsatzgruppen operating in the occupied Baltic States killed over 135,000 Jews in three months.

Nor did these special units operate completely independently of the German Armed Forces. There is clear evidence that leaders of the Einsatzgruppen obtained the co-operation of Army Commanders. In one case the relations between an Einsatzgruppe and the military authorities was described at the time as being "very close, almost cordial"; in another case the smoothness of an Einsatz Commando's operation was attributed to the "understanding for this procedure" shown by the army authorities.

Units of the Security Police and SD in the occupied territories of the East, which were under civil administration, were given a similar task. The planned and systematic character of the Jewish persecutions is best illustrated by the original report of the SS Brigadier-General Stroop, who was in charge of the destruction of the ghetto in Warsaw, which took place in 1943. The Tribunal received in evidence that report, illustrated with photographs, bearing on its title page: "The Jewish Ghetto in Warsaw no longer exists." The volume records a series of reports sent by Stroop to the Higher SS and Police Fuehrer East. In April and May of 1943, in one report, Stroop wrote:

> "The resistance put up by the Jews and bandits could only be suppressed by energetic actions of our troops day and night. The Reichsfuehrer SS ordered therefore on the 23rd April 1943 the cleaning out of the ghetto with utter ruthlessness and merciless

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> tenacity. I therefore decided to destroy and burn down the entire ghetto, without regard to the armament factories. These factories were systematically dismantled and then burnt. Jews usually left their hideouts, but frequently remained in the burning buildings, and jumped out of the windows only when the heat became unbearable. They then tried to crawl with broken bones across the street into buildings which were not afire ... Life in the sewers was not pleasant after the first week. Many times we could hear loud voices in the swewers ... Tear gas bombs were thrown into the manholes, and the Jews driven out of the sewers and captured. Countless numbers of Jews were liquidated in sewers and bunkers through blasting. The longer the resistance continued, the tougher became the members of the Waffen SS, Police and Wehrmacht, who always discharged their duties in an exemplary manner.

Stroop recorded that his action at Warsaw eliminated "a proved total of 56,065 people. To that we have to add the number of those killed through blasting, fire, etc., which cannot be counted." Grim evidence of mass murders of Jews was also presented to the Tribunal in cinematograph films depicting the communal graves of hundreds of victims which were subsequently discovered by the Allies.

These atrocities were all part and parcel of the policy inaugurated in 1941, and it is not surprising that there should be evidence that one or two German officials entered vain protests against the brutal manner in which the killings were carried out. But the methods employed never conformed to a single pattern. The massacres of Rowno and Dubno, of which the German engineer Graebe spoke, were examples of one method, the systematic extermination of Jews in concentration camps, was another. Part of the "final solution" was the gathering of Jews from all German occupied Europe in concentration camps. Their physical condition was the test of life or death. All who were fit to work were used as slave labourers in the concentration

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camps; all who were not fit to work were destroyed in gas chambers and their bodies burnt. Certain concentration camps such as Treblinka and Auschwitz were set aside for this main purpose. With regard to Auschwitz, the Tribunal heard the evidence of Hoess, the Commandant of the camp from May 1st 1940 to December 1st 1943. He estimated that in the camp of Auschwitz alone in that time 2,500,000 persons were exterminated, and that a further 500,000 died from disease and starvation. Hoess described the screening for extermination by stating in evidence -

> "We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariable exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavoured to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realised our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under their clothes, but of course when we found them we would send the children in to be exterminated."

He described the actual killing by stating:

> "It took from three to fifteen minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one half-hour before we opened the doors and removed the bodies. After the bodies were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses."

Beatings, starvations, tortures and killings were general. The inmates were subjected to cruel experiments at Dachau in August 1942, victims were

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immersed in cold water until their body temperature was reduced to 28° Centigrade, when they died immediately. Other experiments included high altitude experiments in pressure chambers, experiments to determine how long human beings could survive in freezing water, experiments with poison bullets, experiments with contagious diseases and experiments dealing with sterilization of men and women by X-rays and other methods.

Evidence was given of the treatment of the inmates before and after their extermination. There was testimony that the hair of women victims was cut off before they were killed, and shipped to Germany, there to be used in the manufacture of mattresses. The clothes, money and valuables of the inmates were also salvaged and sent to the appropriate agencies for disposition. After the extermination the gold teeth and fillings were taken from the heads of the corpses and sent to the Reichsbank.

After cremation the ashes were used for fertiliser, and in some instances attempts were made to utilise the fat from the bodies of the victims in the commercial manufacture of soap. Special groups travelled through Europe to find Jews and subject them to the "final solution". German missions were sent to such satellite countries as Hungary and Bulgaria, to arrange for the shipment of Jews to extermination camps and it is known that by the end of 1944 400,000 Jews from Hungary had been murdered at Auschwitz. Evidence has also been given of the evacuation of 110,000 Jews from part of Rumania for "liquidation." Adolf Eichmann, who had been put in charge of this programme by Hitler, has estimated that the policy pursued resulted in the killing of 6,000,000 Jews, of which 4,000,000 were killed in the extermination institutions.

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THE LAW RELATING TO WAR CRIMES AND CRIMES AGAINST HUMANITY.

Article 6 of the Charter provides:

> "(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
>
> (c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

As heretofore stated, the Charter does not define as a separate crime any conspiracy except the one set out in Article 6(a), dealing with crimes against peace.

The Tribunal is of course bound by the Charter, in the definition which it gives both of war crimes and crimes against humanity. With respect to war crimes, however, as has already been pointed out, the crimes defined by Article 6, section (b), of the Charter were already recognised as war crimes under international law. They were covered by Articles 46, 50, 52 and 56 of the Hague Convention of 1907, and Articles 2, 3, 4, 46 and 51 of the Geneva Convention of 1929. That violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument.

But it is argued that the Hague Convention does not apply in this case, because of the "general participation" clause in Article 2 of the Hague Convention of 1907. That clause provided:

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> "The provisions contained in the regulations (Rules of Land Warfare) referred to in Article I as well as in the present convention do not apply except between contracting powers, and then only if all the belligerents are parties to the convention."

Several of the belligerents in the recent war were not parties to this convention.

In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt "to revise the general laws and customs of war", which it thus recognised to be then existing, but by 1939 these rules laid down in the convention were recognised by all civilised nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6(b) of the Charter.

A further submission was made that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war, because Germany had completely subjugated those countries and incorporated them into the German Reich, a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany. In the view of the Tribunal it is unnecessary in this case to decide whether this doctrine of subjugation, dependent as it is upon military conquest, has any application where the subjugation is the result of the crime of aggressive war. The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after the 1st September 1939. As to the war crimes committed in Bohemia and Moravia, it is a sufficient answer that these territories were

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never added to the Reich, but a mere protectorate was established over them.

With regard to crimes against humanity, there is no doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organised and systematic. The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and in so far as the inhumane acts charged in the Indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.

Col. Volschovlegin

THE ACCUSED ORGANIZATIONS

Article 9 of the Charter provides:

> "At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.
>
> "After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard."

Article 10 of the Charter makes clear that the declaration of criminality against an accused organization is final, and cannot be challenged in any subsequent criminal proceeding against a member of that organization. Article 10 is as follows:

> "In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned."

The effect of the declaration of criminality by the Tribunal is well illustrated by Law Number 10 of the Control Council of Germany passed on the 20th day of December, 1945, which provides:

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"Each of the following acts is recognized as a crime:

...

"(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

...

"(3) Any person found guilty of any of the Crimes above mentioned may upon conviction be punished as shall be determined by the Tribunal to be just. Such punishment may consist of one or more of the following:

(a) Death.
(b) Imprisonment for life or a term of years, with or without hard labour.
(c) Fine, and imprisonment with or without hard labour, in lieu thereof.
(d) Forfeiture of property.
(e) Restitution of property wrongfully acquired.
(f) Deprivation of some or all civil rights. "

In effect, therefore, a member of an organization which the Tribunal has declared to be criminal may be subsequently convicted of the crime of membership and be punished for that crime by death. This is not to assume that international or military courts which will try these individuals will not exercise appropriate standards of justice. This is a far reaching and novel procedure. Its application, unless properly safeguarded, may produce great injustice.

Article 9, it should be noted, uses the words "The Tribunal may declare", so that the Tribunal is vested with discretion as to whether it will declare any organization criminal. This discretion is a judicial one and does not permit arbitrary action, but should be exercised in accordance with well settled legal principles, one of the most important of which is that criminal guilt is personal, and that mass punishments should be avoided. If satisfied of the criminal guilt of any organization or group, this Tribunal should not hesitate to declare it to be criminal because the theory of "group criminality" is new, or because it might be unjustly applied by some subsequent tribunals. On the other

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hand, the Tribunal should make such declaration of criminality so far as possible in a manner to insure that innocent persons will not be punished.

A criminal organization is analogous to a criminal conspiracy in that the essence of both is cooperation for criminal purposes. There must be a group bound together and organized for a common purpose. The group must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organizations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organization. Membership alone is not enough to come within the scope of these declarations.

Since declarations of criminality which the Tribunal makes will be used by other courts in the trial of persons on account of their membership in the organizations found to be criminal, the Tribunal feels it appropriate to make the following recommendations:

1. That so far as possible throughout the four zones of occupation in Germany the classifications, sanctions and penalties be standardized. Uniformity of treatment so far as practical should be a basic principle. This does not, of course, mean that discretion in sentencing should not be vested in the court; but the discretion should be within fixed limits appropriate to the nature of the crime.

2. Law No. 10, to which reference has already been made, leaves punishment entirely in the discretion of the trial court even to the extent of inflicting the death penalty.

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The De-Nazification Law of March 5, 1946, however, passed for Bavaria, Greater-Hesse and Wuerttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any member of an organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the De-Nazification Law. No person should be punished under both laws.

3. The Tribunal recommends to the Control Council that Law No. 10 be amended to prescribe limitations on the punishment which may be imposed for membership in a criminal group or organization so that such punishment shall not exceed the punishment prescribed by the De-Nazification Law.

The Indictment asks that the Tribunal declare to be criminal the following organizations: The Leadership Corps of the Nazi Party; The Gestapo; The S.D.; The S.S.; The S.A.; The Reich Cabinet, and The General Staff and High Command of the German Armed Forces.

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THE LEADERSHIP CORPS OF THE NAZI PARTY

Structure and Component Parts: The Indictment has named the Leadership Corps of the Nazi Party as a group or organization which should be declared criminal. The Leadership Corps of the Nazi Party consisted, in effect, of the official organization of the Nazi Party, with Hitler as Führer at its head. The actual work of running the Leadership Corps was carried out by the Chief of the Party Chancellery (Hess, succeeded by Bormann) assisted by the Party Reich Directorate, or Reichsleitung, which was composed of the Reichleiters, the heads of the functional organizations of the Party, as well as of the heads of the various main departments and offices which were attached to the Party Reich Directorate. Under the Chief of the Party Chancellery were the Gauleiters, with territorial jurisdiction over the major administrative regions of the Party, the Gaus. The Gauleiters were assisted by a Party Gau Directorate or Gauleitung, similar in composition and in function to the Party Reich Directorate. Under the Gauleiters in the Party hierarchy were the Kreisleiters with territorial jurisdiction over a Kreis, usually consisting of a single county, and assisted by a Party Kreis Directorate, or Kreisleitung. The Kreisleiters were the lowest members of the Party hierarchy who were full time paid employees. Directly under the Kreisleiters were the Ortsgruppenleiters, then the Zellenleiters and then the Blockleiters. Directives and instructions were received from the Party Reich Directorate. The Gauleiters had the function of interpreting such orders and issuing them to lower formations. The Kreisleiters had a certain discretion

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. in interpreting orders, but the Ortsgruppenleiters had not, but acted under definite instructions. Instructions were only issued in writing down as far as the Ortsgruppenleiters. The Block and Zellenleiters usually received instructions orally. Membership in the Leadership Corps at all levels was voluntary.

On February 28, 1946, the Prosecution excluded from the declaration asked for all members of the staffs of the Ortsgruppenleiters and all assistants of the Zellenleiters and Blockleiters. The declaration sought against the Leadership Corps of the Nazi Party thus includes the Führer, the Reichsleitung, the Gauleiters and their staff officers, the Kreisleiters and their staff officers, the Ortsgruppenleiters, the Zellenleiters and the Blockleiters, a group estimated to contain at least 600,000 people.

Aims and Activities: The primary purposes of the Leadership Corps from its beginning was to assist the Nazis in obtaining and, after January 30, 1933, in retaining, control of the German State. The machinery of the Leadership Corps was used for the widespread dissemination of Nazi propaganda and to keep a detailed check on the political attitudes of the German people. In this activity the lower Political Leaders played a particularly important role. The Blockleiters were instructed by the Party Manual to report to the Ortsgruppenleiters, all persons circulating damaging rumors or criticism of the regime. The Ortsgruppenleiters, on the basis of information supplied them by the Blockleiters and Zellenleiters, kept a card index of the people within their Ortsgruppe which recorded the factors which would be used in forming a judgment as to their political reliability. The Leadership

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Corps was particularly active during plebiscites. All members of the Leadership Corps were active in getting out the vote and insuring the highest possible proportion of "ja" votes. Ortsgruppenleiters and Political Leaders of higher ranks often collaborated with the Gestapo and SD in taking steps to determine those who refused to vote or who voted "nein", and in taking steps against them which went as far as arrest and detention in a concentration camp.

Criminal Activity: These steps, which relate merely to the consolidation of control of the Nazi Party, are not criminal under the view of the conspiracy to wage aggressive war which has previously been set forth. But the Leadership Corps was also used for similar steps in Austria and those parts of Czechoslovakia, Lithuania, Poland, France, Belgium, Luxembourg and Yugoslavia which were incorporated into the Reich and within the Gaus of the Nazi Party. In those territories the machinery of the Leadership Corps was used for their Germanization through the elimination of local customs and the detection and arrest of persons who opposed German occupation. This was criminal under Article 6(b) of the Charter in those areas governed by the Hague Rules of Land Warfare and criminal under Article 6(c) of the Charter as to the remainder.

The Leadership Corps played its part in the persecution of the Jews. It was involved in the economic and political discrimination against the Jews, which was put into effect shortly after the Nazis came into power. The Gestapo and SD were instructed to coordinate with the Gauleiters and Kreisleiters the measures taken in the pogroms of November 9 and 10, 1938. The Leadership Corps was also used to prevent German public opinion from reacting against the measures taken against

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the Jews in the East. On October 9, 1942, a confidential information bulletin was sent to all Gauleiters and Kreisleiters entitled "Preparatory Measures for the Final Solution of the Jewish Question in Europe. Rumors concerning Conditions of the Jews in the East". This bulletin stated that rumors were being started by returning soldiers concerning the conditions of Jews in the East which some Germans might not understand, and outlined in detail the official explanation to be given. This bulletin contained no explicit statement that the Jews were being exterminated, but it did indicate they were going to labour camps, and spoke of their complete segregation and elimination and the necessity of ruthless severity. Thus, even at its face value, it indicated the utilization of the machinery of the Leadership Corps to keep German public opinion from rebelling at a programme which was stated to involve condemning the Jews of Europe to a lifetime of slavery. This information continued to be available to the Leadership Corps. The August 1944 edition of "Die Lage", a publication which was circulated among the Political Leaders, described the deportation of 430,000 Jews from Hungary.

The Leadership Corps played an important part in the administration of the Slave Labour Programme. A Sauckel decree dated April 6, 1942, appointed the Gauleiters as Plenipotentiary for labour mobilization for their Gaus with authority to coordinate all agencies dealing with labour questions in their Gaus, with specific authority over the employment of foreign workers, including their conditions of work, feeding and housing. Under this authority the Gauleiters assumed control over the allocation of labour in their Gaus, including the forced labourers from foreign countries. In carrying out this task the Gauleiters used many Party offices within their Gaus, including subordinate Political

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Leaders. For example, Sauckel's decree of September 8, 1942, relating to the allocation for household labour of 400,000 women labourers brought in from the East, established a procedure under which applications filed for such workers should be passed on by the Kreisleiters, whose judgment was final.

Under Sauckel's directive the Leadership Corps was directly concerned with the treatment given foreign workers, and the Gauleiters were specifically instructed to prevent "politically inept factory heads" from giving "too much consideration to the care of Eastern workers". The type of question which was considered in their treatment included reports by the Kreisleiters on pregnancies among the female slave labourers, which would result in an abortion if the child's parentage would not meet the racial standards laid down by the SS, and usually detention in a concentration camp for the female slave labourer. The evidence has established that under the supervision of the Leadership Corps, the industrial workers were housed in camps under atrocious sanitary conditions, worked long hours and inadequately fed. Under similar supervision, the agricultural workers, who were somewhat better treated, were prohibited transportation, entertainment and religious worship, and were worked without any time limit on their working hours and under regulations which gave the employer the right to inflict corporal punishment. The Political Leaders, at least down to the Ortsgruppenleiters, were responsible for this supervision. On May 5, 1943, a memorandum of Bormann instructing that mistreatment of slave labourers cease was distributed down to the Ortsgruppenleiters. Similarly, on November 10, 1944, a Speer circular transmitted a Himmler directive which provided that all members of the Nazi Party, in accordance with

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instructions from the Kreisleiter, would be warned by the Ortsgruppenleiters of their duty to keep foreign workers under careful observation.

The Leadership Corps was directly concerned with the treatment of prisoners of war. On November 5, 1941, Bormann transmitted a directive down to the level of Kreisleiter instructing them to insure compliance by the Army with the recent directives of the Department of the Interior ordering that dead Russian prisoners of war should be buried wrapped in tar paper in a remote place without any ceremony or any decorations of their graves. On November 25, 1943, Bormann sent a circular instructing the Gauleiters to report any lenient treatment of prisoners of war. On September 13, 1944, Bormann sent a directive down to the level of Kreisleiter ordering that liaison be established between the Kreisleiters and the guards of the prisoners of war in order "to better assimilate the commitment of the prisoners of war to the political and economic demands". On October 17, 1944, an OKW directive instructed the officer in charge of the prisoners of war to confer with the Kreisleiters on questions of the productivity of labour. The use of prisoners of war, particularly those from the East, was accompanied by a widespread violation of rules of land warfare. This evidence establishes that the Leadership Corps down to the level of Kreisleiter was a participant in this illegal treatment.

The machinery of the Leadership Corps was also utilized in attempts made to deprive Allied airmen of the protection to which they were entitled under the Geneva Convention. On March 13, 1940, a directive of Hess transmitted instructions through the Leadership Corps down to the Blockleiter for the guidance of the civilian population in case of the landing of enemy planes or parachutists, which stated that enemy parachutists

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were to be immediately arrested or "made harmless". On May 30, 1944, Bormann sent a circular letter to all Gau and Kreisleiters reporting instances of lynchings of Allied low level fliers in which no police action was taken. It was requested that Ortsgruppenleiters be informed orally of the contents of this letter. This letter accompanied a propaganda drive which had been instituted by Goebbels to induce such lynchings, and clearly amounted to instructions to induce such lynchings or at least to violate the Geneva Convention by withdrawing any police protection. Some lynchings were carried out pursuant to this programme, but it does not appear that they were carried out throughout all of Germany. Nevertheless, the existence of this circular letter shows that the heads of the Leadership Corps were utilizing it for a purpose which was patently illegal and which involved the use of the machinery of the Leadership Corps at least through the Ortsgruppenleiter.

Conclusion

The Leadership Corps was used for purposes which were criminal under the Charter and involved the Germanization of incorporated territory, the persecution of the Jews, the administration of the slave labour programme and the mistreatment of prisoners of war. The defendants Bormann and Sauckel, who were members of this organization, were among those who used it for these purposes. The Gauleiters, the Kreisleiters and the Ortsgruppenleiters participated, to one degree or another, in these criminal programmes. The Reichsleitung as the staff organization of the Party is also responsible for these criminal programmes as well as the heads of the various staff organizations of

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the Gauleiters and Kreisleiters. The decision of the Tribunal on these staff organizations includes only the Amtsleiters who were heads of offices on the staffs of the Reichsleitung, Gauleitung and Kreisleitung. With respect to other staff officers and party organizations attached to the Leadership Corps other than the Amtsleiters referred to above, the Tribunal will follow the suggestion of the Prosecution in excluding them from the declaration.

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Leadership Corps holding the positions enumerated in the preceding paragraph ~~of~~ (omit) who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; the group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to September 1, 1939.

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GESTAPO AND SD.

Structure and Component Parts: The Prosecution has named Die Geheime Staatspolizei (Gestapo) and Die Sicherheitsdienst des Reichsfuehrer SS (SD) as groups or organizations which should be declared criminal. The Prosecution presented the cases against the Gestapo and the SD together, stating that this was necessary because of the close working relationship between them. The Tribunal permitted the SD to present its defense separately because of a claim of conflicting interests, but after examining the evidence has decided to consider the case of the Gestapo and SD together.

The Gestapo and the SD were first linked together on June 26, 1936, by the appointment of Heydrich, who was the Chief of the SD, to the position of Chief of the Security Police, which was defined to include both the Gestapo and the Criminal Police. Prior to that time the SD had been the intelligence agency, first of the SS, and, after June 4, 1934, of the entire Nazi Party. The Gestapo had been composed of the various political police forces of the several German Federal states which had been unified under the personal leadership of Himmler, with the assistance of Goering. Himmler had been appointed Chief of the German Police in the Ministry of the Interior on June 17, 1936, and in his capacity as Reichsfuehrer SS and Chief of the German Police issued his decree of June 26, 1936, which placed both the Criminal Police, or Kripo, and the Gestapo in the Security Police, and placed both the Security Police and the SD under the command of Heydrich.

This consolidation under the leadership of Heydrich of the Security Police, a state organization, and the SD, a Party organization, was formalized by the decree of September 27, 1939, which united the various

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state and party offices which were under Heydrich as Chief of the Security Police and SD into one administrative unit, the Reichs Security Head Office (RSHA) which was at the same time both one of the principal offices (Hauptamter) of the SS under Himmler as Reichsfuehrer SS and an office in the Ministry of the Interior under Himmler as Chief of the German Police. The internal structure of the RSHA shows the manner in which it consolidated the offices of the Security Police with those of the SD. The RSHA was divided into seven offices (Amter), two of which (Amt I and Amt II) dealt with administrative matters. The Security Police were represented by Amt IV, the head office of the Gestapo, and by Amt V, the head office of the Criminal Police. The SD were represented by Amt III, the head office for SD activities inside Germany, by Amt VI, the head office for SD activities outside of Germany and by Amt VII, the office for ideological research. Shortly after the creation of the RSHA, in November 1939, the Security Police was "coordinated" with the SS by taking all officials of the Gestapo and Criminal Police into the SS at ranks equivalent to their positions.

The creation of the RSHA represented the formalization, at the top level, of the relationship under which the SD served as the intelligence agency for the Security Police. A similar coordination existed in the local offices. Within Germany and areas which were incorporated within the Reich for the purpose of civil administration, local offices of the Gestapo, Criminal Police and SD were formally separate. They were subject to coordination by Inspectors of the Security Police and SD on the staffs of the local Higher SS and Police Leaders, however, and one of the principal functions of the local SD units was to serve as the intelligence

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agency for the local Gestapo units. In the occupied territories, the formal relationship between local units of the Gestapo, Criminal Police and SD was slightly closer. They were organized into local units of the Security Police and SD and were under the control of both the RSHA and of the Higher SS and Police Leader who was appointed by Himmler to serve on the staff of the occupying authority. The offices of the Security Police and SD in occupied territory were composed of departments corresponding to the various Amts of the RSHA. In occupied territories which were still considered to be operational military areas or where German control had not been formally established, the organization of the Security Police and SD was only slightly changed. Members of the Gestapo, Kripo and SD were joined together into military type organizations known as Einsatz Kommandos and Einsatz Gruppen in which the key positions were held by members of the Gestapo, Kripo and SD and in which members of the Order Police, the Waffen SS and even the Wehrmacht were used as auxiliaries. These organizations were under the overall control of the RSHA, but in front line areas were under the operational control of the appropriate Army Commander.

It can thus be seen that from a functional point of view both the Gestapo and the SD were important and closely related groups within the organization of the Security Police and the SD. The Security Police and SD was under a single command, that of Heydrich and later Kaltenbrunner, as Chief of the Security Police and SD; it had a single headquarters, the RSHA; it had its own command channels and worked as one organization both in Germany, in occupied territories and in the areas immediately behind the front lines. During the period with which the Tribunal is

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primarily concerned, applicants for positions in the Security Police and SD received training in all its components, the Gestapo, Criminal Police and SD. Some confusion has been caused by the fact that part of the organization was technically a formation of the Nazi Party while another part of the organization was an office in the Government, but this is of no particular significance in view of the law of December 1, 1933, declaring the unity of the Nazi Party and the German State.

The Security Police and SD was a voluntary organization. It is true that many civil servants and administrative officials were transferred into the Security Police. The claim that this transfer was compulsory amounts to nothing more than the claim that they had to accept the transfer or resign their positions, with a possibility of having incurred official disfavor. During the war a member of the Security Police and SD did not have a free choice of assignments within that organization and the refusal to accept a particular position, especially when serving in occupied territory, might have led to serious punishment. The fact remains, however, that all members of the Security Police and SD joined the organization voluntarily under no other sanction than the desire to retain their positions as officials.

The organization of the Security Police and SD also included three special units which must be dealt with separately. The first of these was the Frontier Police or Granzpolizei which came under the control of the Gestapo in 1937. Their duties consisted in the control of passage over the borders of Germany. They arrested persons who crossed illegally. It is also clear from the evidence presented that they received directives from the Gestapo to transfer foreign workers

whom they apprehended to concentration camps. They could also request the local office of the Gestapo for permission to commit persons arrested to concentration camps. The Tribunal is of the opinion that the Frontier Police must be included in the charge of criminality against the Gestapo.

The border and customs protection or Zollgrenschutz became part of the Gestapo in the summer of 1944. The functions of this organization were similar to the Frontier Police in enforcing border regulations with particular respect to the prevention of smuggling. It does not appear, however, that their transfer was complete but that about half of their personnel of 54,000 remained under the Reich Finance Administration or the Order Police. A few days before the end of the war the whole organization was transferred back to the Reich Finance administration. The transfer of the organization to the Gestapo was so late and it participated so little in the overall activities of the organization that the Tribunal does not feel that it should be dealt with in considering the criminality of the Gestapo.

The third organization was the so-called Secret Field Police which was originally under the Army but which in 1942 was transferred by military order to the Security Police. The Secret Field Police was concerned with security matters within the Army in occupied territory, and also with the prevention of attacks by civilians on military installations or units, and committed War Crimes and Crimes against Humanity on a wide scale. It has not been proved, however, that it was a part of the Gestapo and the Tribunal does not consider it as coming within the charge of criminality contained in the Indictment, except such members as may have been transferred to AMT IV of the RSHA or were members of organizations declared criminal by this Judgment.

Criminal Activity: Originally, one of the primary functions of

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(functions of criminal activity: originally, one of the primary

the Gestapo was the prevention of any political opposition to the Nazi regime, a function which it performed with the assistance of the SD. The principal weapon used in performing this function was the concentration camp. The Gestapo did not have administrative control over the concentration camps, but, acting through the RSHA, was responsible for the detention of political prisoners in those camps. Gestapo officials were usually responsible for the interrogation of political prisoners at the camps.

The Gestapo and the SD also dealt with charges of treason and with questions relating to the press, the Churches and the Jews. As the Nazi programme of anti-Semitic persecution increased in intensity the role played by these groups became increasingly important. In the early morning of November 10, 1938, Heydrich sent a telegram to all offices of the Gestapo and SD giving instructions for the organization of the pogroms of that date and instructing them to arrest as many Jews as the prisons could hold "especially rich ones", but to be careful that those arrested were healthy and not too old. By November 11, 1938, 20,000 Jews had been arrested and many were sent to concentration camps. On January 24, 1939, Heydrich, the Chief of the Security Police and SD, was charged with furthering the emigration and evacuation of Jews from Germany, and on July 31, 1941, with bringing about a complete solution of the Jewish problem in German dominated Europe. A special section of the Gestapo office of the RSHA under Standartenfuehrer Eichmann was set up with responsibility for Jewish matters which employed its own agents to investigate the Jewish problem in occupied territory. Local offices of the Gestapo were used first to supervise the emigration of Jews and later to deport them to the East both from Germany and from the

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territories occupied during the war. Einsatzgruppen of the Security Police and SD operating behind the lines of the Eastern Front engaged in the wholesale massacre of Jews. A special detachment from Gestapo headquarters in the RSHA was used to arrange for the deportation of Jews from Axis satellites to Germany for the "final solution".

Local offices of the Security Police and SD played an important role in the German administration of occupied territories. The nature of their participation is shown by the measures taken in the summer of 1938 in preparation for the attack on Czechoslovakia which was then in contemplation. Einsatzgruppen of the Gestapo and SD were organized to follow the Army into Czechoslovakia to provide for the security of political life in the occupied territories. Plans were made for the infiltration of SD men into the area in advance, and for the building up of a system of files to indicate what inhabitants should be placed under surveillance, deprived of passports or liquidated. These plans were considerably altered due to the cancellation of the attack on Czechoslovakia, but in the military operations which actually occurred, particularly in the war against USSR, Einsatzgruppen of the Security Police and SD went into operation, and combined brutal measures for the pacification of the civilian population with the wholesale slaughter of Jews. Heydrich gave orders to fabricate incidents on the Polish-German frontier in 1939 which would give Hitler sufficient provocation to attack Poland. Both Gestapo and SD personnel were involved in these operations.

The local units of the Security Police and SD continued their work in the occupied territories after they had ceased to be an area of operations. The Security Police and SD engaged in widespread arrests of

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the civilian population of these occupied countries, imprisoned many of them under inhumane conditions, subjected them to brutal third degree methods, and sent many of them to concentration camps. Local units of the Security Police and SD were also involved in the shooting of hostages, the imprisonment of relatives, the execution of persons charged as terrorists and saboteurs without a trial, and the enforcement of the "Nacht und Nebel" decrees under which persons charged with a type of offense believed to endanger the security of the occupying forces were either executed within a week or secretly removed to Germany without being permitted to communicate with their family and friends.

Offices of the Security Police and SD were involved in the administration of the Slave Labour Programme. In some occupied territories they helped local labour authorities to meet the quotas imposed by Sauckel. Gestapo offices inside of Germany were given surveillance over slave labourers and responsibility for apprehending those who were absent from their place of work. The Gestapo also had charge of the so-called work training camps. Although both German and foreign workers could be committed to these camps, they played a significant role in forcing foreign labourers to work for the German war effort. In the latter stages of the war as the SS embarked on a slave labour programme of its own, the Gestapo was used to arrest workers for the purpose of insuring an adequate supply in the concentration camps.

The local offices of the Security Police and SD were also involved in the commission of war crimes involving the mistreatment and murder of prisoners of war. Soviet prisoners of war in prisoner of war camps in Germany were screened by Einsatz Kommandos acting under the directions

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of the local Gestapo offices. Commissars, Jews, members of the intelligentsia, "fanatical Communists" and even those who were considered incurably sick were classified as "intolerable", and exterminated. The local offices of the Security Police and SD were involved in the enforcement of the "Bullet" decree, put into effect on March 4, 1944, under which certain categories of prisoners of war, who were recaptured, were not treated as prisoners of war but taken to Mauthausen in secret and shot. Members of the Security Police and SD were charged with the enforcement of the decree for the shooting of parachutists and commandos.

Conclusion

The Gestapo and SD were used for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labour programme and the mistreatment and murder of prisoners of war. The defendant Kaltenbrunner, who was a member of this organization, was among those who used it for these purposes. In dealing with the Gestapo the Tribunal includes all executive and administrative officials of Amt IV of the RSHA or concerned with Gestapo administration in other departments of the RSHA and all local Gestapo officials serving both inside and outside of Germany, including the members of the Frontier Police, but not including the members of the Border and Customs Protection or the Secret Field Police, except such members as have been specified above. At the suggestion of the Prosecution the Tribunal does not include persons employed by the Gestapo for purely clerical, stenographic, janitorial or similar unofficial routine tasks. In dealing with the SD the Tribunal includes Amts III, VI and VII of the

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RSHA and all other members of the SD, including all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not.

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis for this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to September 1, 1939.

President Legié.

S.S.

Structure and Component Parts: The Prosecution has named Die Schutzstaffeln Der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS) as an organization which should be declared criminal. The portion of the Indictment dealing with the SS also includes the Die Sicherheitsdienst des Reichsfuehrer-SS (commonly known as the SD). This latter organization, which was originally an intelligence branch of the SS later became an important part of the organization of Security Police and SD and is dealt with in the Tribunal's Judgment on the Gestapo.

The SS was originally established by Hitler in 1925 as an elite section of the SA for political purposes under the pretext of protecting speakers at public meetings of the Nazi Party. After the Nazis had obtained power the SS was used to maintain order and control audiences at mass demonstrations and was given the additional duty of "internal security" by a decree of the Fuehrer. The SS played an important role at the time of the Roehm purge of June 30, 1934, and, as a reward for its services, was made an independent unit of the Nazi Party shortly thereafter.

In 1929 when Himmler was first appointed as Reichs Fuehrer, the SS consisted of 280 men who were regarded as especially trustworthy. In 1933 it was composed of 52,000 men drawn from all walks of life. The original formation of the SS was the Allgemeine SS, which by 1939 had grown to a corps of 240,000 men, organized on military lines into divisions and regiments. During the war its strength declined to well under 40,000.

The SS originally contained two other formations, the SS Verfuengung-struppe, a force consisting of SS members who volunteered for four years'

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armed service in lieu of compulsory service with the Army, and the SS Totenkopf Verbaende, special troops employed to guard concentration camps, which came under the control of the SS in 1934. The SS Verfuengungstruppe was organized as an armed unit to be employed with the Army in the event of mobilization. In the summer of 1939, the Verfuengungstruppe was equipped as a motorized division to form the nucleus of the forces which came to be known in 1940 as the Waffen SS. In that year the Waffen SS comprised 100,000 men, 56,000 coming from the Verfuengungstruppe and the rest from the Allgemeine SS and the Totenkopf Verbaende. At the end of the war it is estimated to have consisted of about 580,000 men and 40 divisions. The Waffen SS was under the tactical command of the Army, but was equipped and supplied through the administrative branches of the SS and under SS disciplinary control.

The SS Central Organization had 12 main offices. The most important of these were the RSHA, which has already been discussed, the WVHA or Economic Administration Main Office which administered concentration camps along with its other duties, a Race and Settlement Office together with auxiliary offices for repatriation of racial Germans (Volksdeutschemittelstelle). The SS Central Organization also had a legal office and the SS possessed its own legal system; and its personnel were under the jurisdiction of special courts. Also attached to the SS main offices was a research foundation known as the Experiments Ahnenerbe. The scientists attached to this organization are stated to have been mainly honorary members of the SS. During the war an institute for military scientific research became attached to the Ahnenerbe which conducted extensive

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experiments involving the use of living human beings. An employee of this institute was a certain Dr. Rascher, who conducted these experiments with the full knowledge of the Ahnenerbe, which were subsidized and under the patronage of the Reichsfuehrer SS who was a trustee of the foundation.

Beginning in 1933 there was a gradual but thorough amalgamation of the police and SS. In 1936 Himmler, the Reichs Fuehrer SS, became Chief of the German Police with authority over the regular uniformed police as well as the Security Police. Himmler established a system under which Higher SS and Police Leaders, appointed for each Wehrkreis, served as his personal representatives in coordinating the activities of the Order Police, Security Police and SD and Allgemeine SS within their jurisdictions. In 1939 the SS and police systems were coordinated by taking into the SS all officials of the Security and Order Police, at SS ranks equivalent to their rank in the police.

Until 1940 the SS was an entirely voluntary organization. After the formation of the Waffen SS in 1940 there was a gradually increasing number of conscripts into the Waffen SS. It appears that about a third of the total number of people joining the Waffen SS were conscripts, that the proportion of conscripts was higher at the end of the war than at the beginning, but that there continued to be a high proportion of volunteers until the end of the war.

Criminal Activities: SS units were active participants in the steps leading up to aggressive war. The Verfuengungstruppe was used in the occupation of the Sudetenland, of Bohemia and Moravia and of Memel. The Henlein Free Corps was under the jurisdiction of the Reichs Fuehrer SS for operations in the Sudetenland in 1938 and the Volksdeutschemittelstelle

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financed fifth column activities there.

The SS was even a more general participant in the commission of War Crimes and Crimes against Humanity. Through its control over the organization of the Police, particularly the Security Police and SD, the SS was involved in all the crimes which have been outlined in the section of this Judgment dealing with the Gestapo and SD. Other branches of the SS were equally involved in these criminal programs. There is evidence that the shooting of unarmed prisoners of war was the general practice in some Waffen SS divisions. On October 1, 1944, the custody of prisoners of war and interned persons was transferred to Himmler, who in turn transferred prisoner of war affairs to SS Obergruppenfuehrer Berger and to SS Obergruppenfuehrer Pohl. The Race and Settlement Office of the SS together with the Volksdeutschemittelstelle were active in carrying out schemes for Germanization of occupied territories according to the racial principles of the Nazi Party and were involved in the deportation of Jews and other foreign nationals. Units of the Waffen SS and Einsatzgruppen operating directly under the SS main office were used to carry out these plans. These units were also involved in the widespread murder and ill-treatment of the civilian population of occupied territories. Under the guise of combatting partisan units, units of the SS exterminated Jews and people deemed politically undesirable by the SS, and their reports record the execution of enormous numbers of persons. Waffen SS divisions were responsible for many massacres and atrocities in occupied territories such as the massacres at Oradour and Lidice.

From 1934 onwards the SS was responsible for the guarding and administration of concentration camps. The evidence leaves no doubt that

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the consistently brutal treatment of the inmates of concentration camps was carried out as a result of the general policy of the SS, which was that the inmates were racial inferiors to be treated only with contempt. There is evidence that where manpower considerations permitted, Himmler wanted to rotate guard battalions so that all members of the SS would be instructed as to the proper attitude to take to inferior races. After 1942 when the concentration camps were placed under the control of the WVHA they were used as a source of slave labor. An agreement made with the Ministry of Justice on 18 September 1942 provided that anti-social elements who had finished prison sentences were to be delivered to the SS to be worked to death. Steps were continually taken, involving the use of the Security Police and SD and even the Waffen SS, to insure that the SS had an adequate supply of concentration camp labor for its projects. In connection with the administration of the concentration camps, the SS embarked on a series of experiments on human beings which were performed on prisoners of war or concentration camp inmates. These experiments included freezing to death, and killing by poison bullets. The SS was able to obtain an allocation of Government funds for this kind of research on the grounds that they had access to human material not available to other agencies.

The SS played a particularly significant role in the persecution of the Jews. The SS was directly involved in the demonstrations of November 10, 1938. The evacuation of the Jews from occupied territories was carried out under the directions of the SS with the assistance of SS Police units. The extermination of the Jews was carried out under the direction

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of the SS central organizations. It was actually put into effect by SS formations. The Einsatzgruppen engaged in wholesale massacres of the Jews. SS police units were also involved. For example, the massacre of Jews in the Warsaw Ghetto was carried out under the directions of SS Brigadefuehrer and Major General of the Police Stroup. A special group from the SS central organization arranged for the deportation of Jews from various Axis satellites and their extermination was carried out in the concentration camps run by the WVHA.

It is impossible to single out any one portion of the SS which was not involved in these criminal activities. The Allgemeine SS was an active participant in the persecution of the Jews and was used as a source of concentration camp guards. Units of the Waffen SS were directly involved in the killing of prisoners of war and the atrocities in occupied countries. It supplied personnel for the Einsatzgruppen, and had command over the concentration camp guards after its absorption of the Totenkopf SS, which originally controlled the system. Various SS Police units were also widely used in the atrocities in occupied countries and the extermination of the Jews there. The SS central organization supervised the activities of these various formations and was responsible for such special projects as the human experiments and "final solution" of the Jewish question.

The Tribunal finds that knowledge of these criminal activities was sufficiently general to justify declaring that the SS was a criminal organization to the extent hereinafter described. It does appear that an attempt was made to keep secret some phases of its activities, but

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its criminal programs were so widespread, and involved slaughter on such a gigantic scale, that its criminal activities must have been widely known. It must be recognized, moreover, that the criminal activities of the SS followed quite logically from the principles on which it was organized. Every effort had been made to make the SS a highly disciplined organization composed of the elite of National Socialism. Himmler had stated that there were people in Germany "who become sick when they see these black coats" and that he did not expect that "they should be loved by too many". Himmler also indicated his view that the SS was concerned with perpetuating the elite racial stock with the object of making Europe a Germanic Continent and the SS was instructed that it was designed to assist the Nazi Government in the ultimate domination of Europe and the elimination of all inferior races. This mystic and fanatical belief in the superiority of the Nordic German developed into the studied contempt and even hatred of other races which led to criminal activities of the type outlined above being considered as a matter of course if not a matter of pride. The actions of a soldier in the Waffen SS who in September 1939, acting entirely on his own initiative, killed fifty Jewish laborers whom he had been guarding, were described by the statement that as an SS man, he was "particularly sensitive to the sight of Jews", and had acted "quite thoughtlessly in a youthful spirit of adventure" and a sentence of three years imprisonment imposed on him was dropped under an amnesty. Hess wrote with truth that the Waffen SS were more suitable for the specific tasks to be solved in occupied territory owing to their extensive training in questions of race and nationality.

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Himmler, in a series of speeches made in 1943, indicated his pride in the ability of the SS to carry out these criminal acts. He encouraged his men to be "tough and ruthless", he spoke of shooting "thousands of leading Poles", and thanked them for their cooperation and lack of squeamishness at the sight of hundreds and thousands of corpses of their victims. He extolled ruthlessness in exterminating the Jewish race and later described this process as "delousing". These speeches show that the general attitude prevailing the SS was consistent with these criminal acts.

Conclusions: The SS was utilized for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program and the mistreatment and murder of prisoners of war. The defendant Kaltenbrunner was a member of the SS implicated in these activities. In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS including the members of the Allgemeine SS, members of the Waffen SS, members of the SS Totenkopf Verbaende and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called SS riding units. The Sicherheitsdienst des ReichsFuehrer SS (commonly known as the SD) is dealt with in the Tribunal's Judgment on the Gestapo and SD.

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or

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remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organizations enumerated in the preceding paragraph prior to September 1, 1939.

H2753-0172

THE SA

Structure and Component Parts: The prosecution has named Die Sturmabteilungen der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SA) as an organization which should be declared criminal. The SA was founded in 1921 for political purposes. It was organized on military lines. Its members wore their own uniforms and had their own discipline and regulations. After the Nazis had obtained power the SA greatly increased in membership due to the incorporation within it of certain veterans organizations. In April 1933, the Stahlhelm, an organization of one and a half million members, was transferred into the SA, with the exception of its members over 45 years of age and some others, pursuant to an agreement between their leader Seldte and Hitler. Another veterans organization, the so-called Kyffhauserbund, was transferred in the same manner, together with a number of rural riding organizations.

Until 1933, there is no question but that membership in the SA was voluntary. After 1933 civil servants were under certain political and economic pressure to join the SA. Members of the Stahlhelm, the Kyffhauserbund and the rural riding associations were transferred into the SA without their knowledge but the Tribunal is not satisfied that the members in general endeavored to protest against this transfer or that there was any evidence, except in isolated cases, of the consequences of refusal. The Tribunal therefore finds that membership in the SA was generally voluntary.

By the end of 1933 the SA was composed of four and a half million men. As a result of changes made after 1934, in 1939 the SA numbered one and a half million men.

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Activities: In the early days of the Nazi movement the storm troopers of the SA acted as the "strong arm of the Party". They took part in the beer hall feuds and were used for street fighting in battles against political opponents. The SA was also used to disseminate Nazi ideology and propaganda and placed particular emphasis on anti-Semitic propaganda, the doctrine of "Lebensraum", the revision of the Versailles Treaty and the return of Germany's colonies.

After the Nazi advent to power, and particularly after the elections of March 5, 1933, the SA played an important role in establishing a Nazi reign of terror over Germany. The SA was involved in outbreaks of violence against the Jews and was used to arrest political opponents and to guard concentration camps, where they subjected their prisoners to brutal mistreatment.

On June 30th and July 1st and 2nd, 1934, a purge of SA leaders occurred. The pretext which was given for this purge, which involved the killing of Roehm, the Chief of Staff of the SA, and many other SA leaders, was the existence of a plot against Hitler. This purge resulted in a great reduction in the influence and power of the SA. After 1934 it rapidly declined in political significance.

After 1934 the SA engaged in certain forms of military or paramilitary training. The SA continued to engage in the dissemination of Nazi propaganda. Isolated units of the SA were even involved in the steps leading up to aggressive war and in the commission of War Crimes and Crimes against Humanity. SA units were among the first in the occupation of Austria in March 1938. The SA supplied many of the men and a large part of the equipment which composed the Sudeten Free Corps of Henlein, although

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it appears that the corps was under the jurisdiction of SS during its operation in Czechoslovakia.

After the occupation of Poland, the SA group Sudeten was used for transporting prisoners of war. Units of the SA were employed in the guarding of prisoners in Danzig, Posen, Silesia and the Baltic States.

Some SA units were used to blow up synagogues in the Jewish pogrom of the 10th and 11th of November 1938. Groups of the SA were concerned in the ill-treatment of Jews in the Ghettos of Vilna and Kaunas.

Conclusion

~~It~~ until the purge beginning on June 30, 1934, the SA was a group composed in large part of ruffians and bullies who participated in the Nazi outrages of that period. It has not been shown, however, that these atrocities were part of a specific plan to wage aggressive war, and the Tribunal therefore cannot hold that these activities were criminal under the Charter. After the purge, the SA was reduced to the status of a group of unimportant Nazi hangers-on. Although in specific instances some units of the SA were used for the commission of War Crimes and Crimes against Humanity, it cannot be said that its members generally participated in or even knew of the criminal acts. For these reasons the Tribunal does not declare the SA to be a criminal organization within the meaning of Article 9 of the Charter.

H2753-0175

THE REICH CABINET

The prosecution has named as a criminal organization the Reich Cabinet (Die Reichsregierung) consisting of members of the ordinary cabinet after January 30, 1933, members of the Council of Ministers for the defense of the Reich and members of the Secret Cabinet Council. The Tribunal is of opinion that no declaration of criminality should be made with respect to the Reich Cabinet for two reasons: (1) because it is not shown that after 1937 it ever really acted as a group or organization; (2) because the group of persons here charged is so small that members could be conveniently tried in proper cases without resort to a declaration that the Cabinet of which they were members was criminal.

As to the first reason for our decision, it is to be observed that from the time that it can be said that a conspiracy to make aggressive war existed the Reich Cabinet did not constitute a governing body, but was merely an aggregation of administrative officers subject to the absolute control of Hitler. Not a single meeting of the Reich Cabinet was held after 1937, but laws were promulgated in the name of one or more of the cabinet members. The Secret Cabinet Council never met at all. A number of the cabinet members were undoubtedly involved in the conspiracy to make aggressive war; but they were involved as individuals, and there is no evidence that the cabinet as a group or organization took any part in these crimes. It will be remembered that when Hitler disclosed his aims of criminal aggression at the Hoszbach Conference, the disclosure was not made before the cabinet and that the cabinet

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was not consulted with regard to it, but, on the contrary, that it was made secretly to a small group upon whom Hitler would necessarily rely in carrying on the war. Likewise no cabinet order authorized the invasion of Poland. On the contrary, the defendant Schacht testifies that he sought to stop the invasion by a plea to the Commander-in-Chief of the Army that Hitler's order was in violation of the Constitution because not authorized by the cabinet.

It does appear, however, that various laws authorizing acts which were criminal under the Charter were circulated among the members of the Reich Cabinet and issued under its authority, signed by the members whose departments were concerned. This does not, however, prove that the Reich Cabinet, after 1937, ever really acted as an organization.

As to the second reason, it is clear that those members of the Reich Cabinet who have been guilty of crimes should be brought to trial; and a number of them are now on trial before the Tribunal. It is estimated that there are 48 members of the group, that eight of these are dead and seventeen are now on trial, leaving only 23 at the most, as to whom the declaration could have any importance. Any others who are guilty should also be brought to trial; but nothing would be accomplished to expedite or facilitate their trials by declaring the Reich Cabinet to be a criminal organization. Where an organization with a large membership is used for such purposes, a declaration obviates the necessity of inquiring as to its criminal character in the later trial of members who are accused of participating through membership in its criminal purposes and thus saves much time and trouble. There is no such advantage in the case of a small group like the Reich Cabinet.

H2753-0177

GENERAL STAFF AND HIGH COMMAND

The prosecution has also asked that the General Staff and High Command of the German Armed Forces be declared a criminal organization. The Tribunal believes that no declaration of criminality should be made with respect to the General Staff and High Command. The number of persons charged, while larger than that of the Reich Cabinet, is still so small that individual trials of these officers would accomplish the purpose here sought better than a declaration such as requested. But a more compelling reason is that in the opinion of the Tribunal the General Staff and High Command is neither an "organization" nor a "group" within the meaning of those terms as used in Article 9 of the Charter.

Some comment on the nature of this alleged group is requisite. According to the Indictment and evidence before the Tribunal, it consists of approximately 130 officers, living and dead, who at any time during the period from February 1938, when Hitler reorganized the Armed Forces, and May 1945, when Germany surrendered, held certain positions in the military hierarchy. These men were high-ranking officers in the three armed services: OKH - Army, OKM - Navy, and OKL - Air Force. Above them was the overall armed forces authority, OKW - High Command of the German Armed Forces with Hitler as the Supreme Commander. The officers in OKW, including defendant Keitel as Chief of the High Command, were in a sense Hitler's personal staff. In the larger sense they coordinated and directed the three services, with particular emphasis on the functions of planning and operations.

The individual officers in this alleged group were, at one time or another, in one of four categories: 1) Commanders-in-Chief of one of the

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three services; 2) Chief of Staff of one of the three services; 3) "Oberbefehlshabers", the field commanders-in-chief of one of the three services, which of course comprised by far the largest number of these persons; or 4) an OKW officer, of which there were three, defendants Keitel and Jodl, and the latter's Deputy Chief, Warlimont. This is the meaning of the Indictment in its use of the term "General Staff and High Command".

The Prosecution has here drawn the line. The Prosecution does not indict the next level of the military hierarchy consisting of commanders of army corps, and equivalent ranks in the Navy and Air Force, nor the level below, the division commanders or their equivalent in the other branches. And the staff officers of the four staff commands of OKW, OKH, OKM, and OKL are not included, nor are the trained specialists who were customarily called General Staff officers.

In effect, then, those indicted as members are military leaders of the Reich of the highest rank. No serious effort was made to assert that they composed an "organization" in the sense of Article 9. The assertion is rather that they were a "group", which is a wider and more embracing term than "organization".

The Tribunal does not so find. According to the evidence, their planning at staff level, the constant conferences between staff officers and field commanders, their operational technique in the field and at headquarters was much the same as that of the armies, navies and air forces of all other countries. The overall effort of OKW at coordination and direction could be matched by a similar, though not identical form of organization in other military forces, such as the Anglo-American Combined Chiefs of Staff.

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To derive from this pattern of their activities the existence of an association or group does not, in the opinion of the Tribunal, logically follow. On such a theory the top commanders of every other nation are just such an association rather than what they actually are, an aggregation of military men, a number of individuals who happen at a given period of time to hold the high-ranking military positions.

Much of the evidence and the argument has centered around the question of whether membership in these organizations was or was not voluntary; in this case, it seems to the Tribunal to be quite beside the point. For this alleged criminal organization has one characteristic, a controlling one, which sharply distinguishes it from the other five indicted. When an individual became a member of the SS for instance, he did so, voluntarily or otherwise, but certainly with the knowledge that he was joining something. In the case of the General Staff and High Command, however, he could not know he was joining a group or association, for such association did not exist except in the charge of the Indictment. He knew only that he had achieved a certain high rank in one of the three services, and could not be conscious of the fact that he was becoming a member of anything so tangible as a "group", as that word is commonly used. His relations with his brother officers in his own branch of the service and his association with those of the other two branches were, in general, like those of other services all over the world.

The Tribunal therefore does not declare the General Staff and High Command to be a criminal organization.

Although the Tribunal is of the opinion that the term "group" in Article 9 must mean something more than this collection of military

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officers, it has heard much evidence as to the participation of these officers in planning and waging aggressive war, and in committing war crimes and crimes against humanity. This evidence is, as to many of them, clear and convincing.

They have been responsible in large measure for the miseries and suffering that have fallen on millions of men, women and children. They have been a disgrace to the honorable profession of arms. Without their military guidance the aggressive ambitions of Hitler and his fellow Nazis would have been academic and sterile. Although they were not a group falling within the words of the Charter, they were certainly a ruthless military caste. The contemporary German militarism flourished briefly with its recent ally, National Socialism, as well as or better than it had in the generations of the past.

Many of these men have made a mockery of the soldier's oath of obedience to military orders. When it suits their defense they say they had to obey; when confronted with Hitler's brutal crimes, which are shown to have been within their general knowledge, they say they disobeyed. The truth is they actively participated in all these crimes, or sat silent and acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world has ever had the misfortune to know. This must be said.

Where the facts warrant it, these men should be brought to trial so that those among them who are guilty of these crimes should not escape punishment. 30th September 1946

Geoffrey Lawrence
President
Francis Biddle
H. Donnedieu de Vabres
Norman Birkett
John J. Parker
Robert Falco
A Nikitchenko

Judgment English

Original

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